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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 401. 105

R. CARTER WELLFORD, B. RANDOLPH WELLFORD, AND ARMISTEAD L. WELLFORD, APPELLANTS,

vs.

WILLIAM TAYLOE SNYDER, TRUSTEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED SEPTEMBER 16, 1887.

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1 *Original Bill for Construction of Will of Col. J. Tayloe & Injunction, &c. Filed May* 27, 1885. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia this 27th day of May, A. D. 1885.

WM. TAYLOE SNYDER, Trustee, Plaintiff, *vs.* ADELAIDE E. BAKER, SARAH G. BAKER PENÂSCO DE Galé, Norberto Penâsco de Galé, R. Carter Wellford, B. Randolph Wellford, Armistead N. Wellford, Virginia T. Lewis, Administratrix, w. a.; Virginia T. Lewis, Henry G. Lewis, Trapiere S. Lewis, Etta T. Key, Etta T. Smith, Joseph Hall Key, Charles E. Key, and Harriet H. Key, and All Unknown Heirs of H. G. S. Key & Henrietta H., His Wife, Defendants.	No. 9464. Equity Docket 24.

To the supreme court of the District of Columbia, holding an equity court for said District:

2 The plaintiff states as follows:

1. That he is a citizen of the city of Washington, District of Columbia, and brings this suit as trustee appointed by that certain decree made by this honorable court the 13th day of September, A. D. 1883, in equity cause No. 8228, wherein Virginia Tayloe *et al.* are complainants and Henry A. Tayloe *et al.* are defendants; to which cause reference is asked, and the same is prayed to be taken as part hereof.

2. That Adelaide E. Baker and Sarah G. Penâsco de Galé, who has intermarried with Norberto Penâsco de Galé, are residents of the city of Barcelona, in the Kingdom of Spain, and are the children of the late James Baker and Catherine, his wife, who was one of the daughters of the late Colonel John Tayloe, "of Washington, in the Territory of Columbia," and they are sued as "the representatives" of the said Catherine Baker, formerly Tayloe, now deceased.

3. That R. Carter Wellford, B. Randolph Wellford, and Armistead N. Wellford are citizens of the State of Virginia, the
3 first named residing near Warsaw, in Richmond county, and the two last named residing in the city of Richmond, and are the only grandchildren of the late Robert Carter and Elizabeth M., his wife, who was one of the daughters of the said Colonel John Tayloe, and they are sued as "the representatives" of the said Elizabeth M. Carter, formerly Tayloe, now deceased.

4. That Virginia T. Lewis, Henry G. Lewis, and Trapiere S. Lewis are residents of the city of Baltimore, in the State of Maryland, and are the children of Henry H. Lewis and Anne O., his wife, who was one of the daughters of the said Colonel John Tayloe; Virginia T. Lewis being sued as the claimant of a certain fund hereinafter mentioned by virtue of the will of said Virginia Tayloe, one of the daughters of the said Colonel John Tayloe, by virtue of which she

claims as the sole legatee and administratrix, with will annexed, of Virginia Tayloe aforesaid, and she is also sued, together with Henry G. Lewis and Trapiere S. Lewis, as "the representatives" of the said Anne O. Lewis, formerly Tayloe, now deceased.

4 5. That Etta T. Key resides at Uniontown, in the State of Alabama: that Etta T. Smith resides in the county of Northumberland, State of Virginia; that the residences of Joseph Hall Key, Charles E. Key, and Harriet H. Key are unknown to the plaintiff, nor is he able to state the respective ages of the parties above named in this paragraph. The said parties heretofore named in this paragraph, together with any and all other representatives of the late Henry G. S. Key and Henrietta Hill, his wife, who was one of the daughters of the said Colonel John Tayloe, if there should be any such other representatives unknown to the plaintiff, are sued as "the representatives" of the said Henrietta Hill Key, formerly Tayloe, now deceased.

6. That Colonel John Tayloe aforesaid, by his last will and testament, a copy of which is hereto annexed and marked Exhibit W. T. S. No. 1 (said will being recorded in Will Book No. 3, folio 465, of the records of the office of the register of wills of the District of Columbia, which record is prayed be taken and read as part hereof), made the following bequest:

5 "I give and bequeath to my daughters, Catherine, Elizabeth M., Virginia, and Anne O. Tayloe, twenty thousand dollars apiece, to be vested in United States bank stock or in Government securities, which stock or securities I do hereby direct that my executors hereinafter named shall hold in trust for my said daughter- respectively, and shall apply the dividends, interest, or profits of the said stock or securities to the use and benefit of my said daughters, Catherine, Elizabeth M., Virginia, and Anne O. Tayloe, severally and respectively, as the said dividends, interest, or profits shall accrue; and from and after the intermarriage of any of them, then my said executors shall hold the said bank stock or other securities belonging to said daughters so marrying in trust for the following purposes—that is to say, in trust for the maintenance of her and her husband during their joint lives; then in trust for the survivor of the said husband and wife during his or her life; and after the death of such survivor, then in trust for such issue as she may leave at the time of her death; and in case she shall die without leaving such issue, then in trust for her surviving sisters (my other
6 daughters) and the issue of any deceased sister, such issue taking such share as the deceased sister whom they represent would have taken had she been alive to take; and it is my intention that the stock and securities, as also the dividends, interest, or profits thereof, shall be utterly free from the power or control of the husbands of my said daughters; and the better to secure the payment of these my daughters' fortunes, I do hereby direct that if the funds hereinafter particularly appropriated for the payment of debts and legacies shall be insufficient for the payment of debts and legacies, my estate generally must be charged to make up the deficiency to my said daughters."

7. That the said Virginia Tayloe died testate and unmarried on or about April 5th, 1883, at Matley Hill, in Baltimore county, Maryland, and her will was admitted to probate in the said office of register of wills for said District of Columbia May 15th, 1885, and is recorded in Will Book No. 22, folio —, of the records of said office, which record it is prayed may be taken as a part hereof. By her said will,
7 a copy of which is hereto annexed, marked Exhibit W. T. S. No. 2, the said Virginia T. Lewis is made the sole legatee of said sum of twenty thousand dollars ($20,000) mentioned in the 6th paragraph hereof.

8. That the said Virginia T. Lewis was appointed administratrix, with the will annexed, of the said Virginia Tayloe, deceased, on May 22nd, 1885, and did, on the same day, as administratrix as aforesaid, make written demand upon the plaintiff, which written demand is hereto annexed, marked Exhibit W. T. S. No. 3, demanding that the plaintiff deliver to her immediately all property held by him as trustee as aforesaid.

9. That George F. Appleby, Esq., a member of the bar of this honorable court, as solicitor for Adelaide E. Baker, Sarah G. Penâsco de Galé, and Norberto Penâsco de Galé, her husband, has made written demand (which is hereto annexed, marked Exhibit W. T. S. No. 4) upon the plaintiff in behalf of his clients, conflicting in its nature with that made by the said Virginia T. Lewis as aforesaid.

8 10. That Leigh Robinson, Esq., a member of the bar of this honorable court, as solicitor for R. Carter Wellford, B. Randolph Wellford, and Armistead N. Wellford, has made written demand upon plaintiff (which demand is hereto annexed, marked Exhibit W. T. S. No. 5) in behalf of his clients, also conflicting in its nature with that made by the said Virginia T. Lewis as aforesaid.

11. That Randall Hagner, Esq., a member of the bar of this honorable court, as solicitor for Etta T. Smith, has made written demand (which is hereto annexed, marked Exhibit W. T. S. No. 6) upon plaintiff on behalf of his client, also conflicting in its nature with that made by the said Virginia Tayloe Lewis as aforesaid.

12. That the administratrix, with will annexed, of said Virginia Tayloe demands the whole of the fund, and contends that the testatrix had a right to dispose of the legacy of twenty thousand dollars ($20,000); that the trusts concerning the holding of the securities
9 did not apply to the case of said Virginia Tayloe, because she never married. The representatives of the surviving sisters of said Virginia Tayloe, other than the Lewis defendants, contend that upon the whole will of the said Colonel John Tayloe it is clear that the said Colonel John Tayloe intended his daughter's portion, in case of any daughter dying without issue surviving her, to go to the surviving daughters or their respective issues.

Under any construction the defendant, Virginia T. Lewis, is entitled to a part of the fund and the plaintiff is ready and willing to pay the same, but cannot with safety to himself do so without a receipt from her in her individual as well as her administrative capacity.

Being in doubt himself as to the true construction of the said will and the proper distribution of the fund in his hands, the plaintiff respectfully requests the court to consider the said will and the codicils thereto of the said Colonel John Tayloe and put a construction thereupon as to the fortunes left by him to his respective daughters and to give directions to your plaintiff by a final decree in the premises as to the proper distribution of the funds in his hands as trustee as aforesaid.

10 Your plaintiff prays as follows:

1. That said defendants may be made parties hereto by proper process of your honorable court, and may be required to answer this bill of complaint.

2. That the defendants hereto may be restrained by the order and injunction of this court from suing your plaintiff at law in regard to the fund herein mentioned until the will of the said Colonel John Tayloe be construed as is herein prayed.

3. That this honorable court may grant such other and further relief in the premises as may be just and equitable.

WM. TAYLOE SNYDER,
Trustee as Aforesaid.

CHAS. D. FOWLER,
Sol'r for Plaintiff.

I do solemnly swear that I have read the bill above by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts
11&12 therein stated upon information and belief I believe to be true; and I further swear that the prayer herein for an injunction is not made for purposes of delay.

WM. TAYLOE SNYDER.

Sworn to and subscribed to *and sworn to* this 27th day of May, 1885.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS, *Ass't Clerk.*

13 EXHIBIT W. T. S. No. 1. Filed May 27, 1885. R. J. Meigs, Clerk.

Copy of the Will of the Late Col. John Tayloe.

In the name of God, amen. I, John Tayloe, of Washington, in the Territory of Columbia (formerly of Mt. Airy, in Richmond Co., Virginia), do make this my last will and testament, hereby revoking all others by me heretofore made.

Imprimis my will is that my body be interred in a plain, private, and decent manner near the grave of my dearly remembered daughter, Rebecca Plater Tayloe, dec'd, if I should die at Mt. Airy or anywhere convenient to that place of interment; but if not, then I wish to be interred in the most convenient, proper church-yard.

My will — that all my just debts be punctually and honorably paid

as soon as may be convenient after my decease. By this direction I wish to do justice to my creditors. I mean not, however, to revive claims (if there be any such) the staleness and antiquity of which would furnish any presumption that they had been paid. The known punctuality with which I have transacted my affairs
14 will justify me in restraining the intent of this clause to provide for debts which are legally recoverable. Indeed, I own very little that I know of.

I give and bequeath to my beloved wife, Anne Tayloe, for life, all that portion of my estate which she would be entitled to by law in case of my intestacy, and over and above that I further give to her, the year of my death, two thousand dollars, to be paid to her as soon as convenient after I die, for her current expenses of that year; and I further give to her twelve house servants, such as she may choose out of my whole estate, the books which have been purchased for her or which are called hers, my coach and travelling carriage, with the carriage horses and harness belonging to them, which money, servants, books, carriages, horses, and harness are to belong to her absolutely and entirely as her own.

I also give her my dwelling-house in the city of Washington wherein we at present reside, with all the furniture thereunto belonging, and the use of all the plate which is there, and the waggons, carts, utensils of every description, and all other conveniences to our said dwelling appertaining.

15 Also the use of my farm near Washington called Petworth, with all its stocks, slaves, utensils of all sorts, with all other its appurtenances thereunto belonging at the time of my death; to have and to *to* hold the said dwelling-house, furniture, plate, &c., and the said farm, stocks, &c., and all that is contained in the latter part of this clause to her during her natural life and no longer.

I give and devise to my son, Benjamin Ogle Tayloe, and his heirs forever my Nanjemoy plantations, in Lewis Neck, in Charles county, Maryland, lately known by the names of Deatley's and Pemberton's; also the estates which I have lately purchased from Stith and Thornton, called Windsor, South Hill, and Society Hill, in King George county, Virginia, and direct that my son, William Henry Tayloe, shall, by good and sufficient conveyance, release all his right, title, and interest in all and every of these estates—Windsor, South Hill, and Society Hill—to the said Benjamin, his heirs and assigns forever; but the said plantations called Pemberton's and Deatley's are expressly subjected to the payment of four hundred dollars, which I have settled upon my daughter-in-law, Maria Tayloe for and during her natural life, which said four hundred
16 dollars is to be paid in semi-annual moieties on the first of April and the first of October in each year during the life of the said Maria Tayloe and no longer.

I give and devise unto my son, William Henry Tayloe, and his heirs forever my plantation and house called Mt. Airy, in Richmond county, Virginia, and all the outhouses and buildings, with all the lands thereunto belonging, namely, Marshfield, the Old House, Doctor's Hall, and Forkland plantations, upon condition that he convey

by good and sufficient deed the estates called Windsor, South Hill, and Society Hill, as hereinbefore directed, to my son, Benjamin Ogle Tayloe; but this devise to my son Wm. is expressly subjected in like manner as is hereinbefore directed to the payment of four hundred dollars, another part of the said annuity of twelve hundred dollars, to my daughter-in-law, Maria Tayloe, for and during her natural life and no longer, and my grandson, John Tayloe, Jr., is hereby directed, as soon as he comes of age or shall be competent to do so, to convey by good and sufficient deed release to the said William Henry H. Tayloe and his heirs all his estate in the Marshfield plantation.

17 I give and devise to my son, Edward Thornton Tayloe, and his heirs forever all my plantation in King George county, Virginia, called the Hop Yard, including furnaces; also the plantation which I have lately bought of Taliaferro called the Dogne, adjoining to the Hop Yard.

I give and devise unto my son, George Plater Tayloe, and his heirs all my plantation in Essex county, Virginia, called Gwynnfield.

I give and devise unto my son, Henry Augustine Tayloe, and his heirs all that estate in King George county called Oaken Brow, and I also devise to him and his heirs so many of my lots in the city of Washington as will make the property devised to my said son Henry in this my will equal in value to the property devised to my son Charles; the valuation of my respective devises, as well as the selection of the city property to equalise the value, to be made by my executors or by such two or more disinterested persons as my executors or a majority of them may appoint.

I give unto my son, Charles Tayloe, and his heirs all my plantations in the county of Prince William, commonly called Neabsco, Deep Hole, and the Farm.

18 I give and bequeath to the devisees, respectively, of the plantations and the estates by this my will devised the rents accruing or the crops growing upon their respective estates so to them devised at the time of my death, whether that event happen before or after the first day of March, provided the payments of debts and legacies does not otherwise require, but if it does, then the rents accruing and the crops growing on such of the lands and estates as may be in my possession on cultivation at the time of my death and shall not be in the usufructuary possession of any of my sons, for I have put some of them into the possession of some of my land and may hereafter put others). I devise such rents and crops, whether I die before or after the first of March, to my executors, to be assets in their hands for payment of debts and legacies, or at least so much of said rents and crops as may be sufficient for that purpose.

I give and devise to my grandson, John Tayloe, Junior, and his heirs forever, my estates in Charles county, in the State of Maryland, called Wellington and Waterloo or Maryland Point, lately purchased by me from Jenifer, Goley, Muncaster, and others:

19 Provided, *that* nevertheless, that I except, however, from the de-

vise of the estate called Wellington one hundred acres of woodland, which was formerly purchased by those under whom I claim from — Meeks. These hundred acres of woodland I devise unto my son, Benjamin O. Tayloe, and his heirs, that it may revert to the contiguous land, called Meeks Park, which my said son has purchased. With the said estates devised to my said grandson I also give and bequeath to him out of the slaves that are thereon twenty working hands of both sexes; also five children. These five children upon the said estates are given him in lieu of Alfred, Emanuel, Martha, Becky, and George, children, slaves at Mt. Airy, which I formerly gave him; but from my aversion to seperate families of slaves I now give him five children corresponding in ages and sexes with said five children at Mt. Airy, and these twenty and five slaves are given to him upon condition that he claims those five children aforesaid at Mt. Airy, which I wish to go with other slaves at Mt. Airy to my son William; and the said estates called Wellington and Waterloo are also given to him, the said John Tayloe, Jr., upon condition that he and his heirs never claim the plantation called
20 Marskfield, which I have devised with Mt. Airy to my son, William H. Tayloe. These plantations and the said twenty-five slaves, together with all the stocks, utensils, tools, implements, furniture, &c., which I may have on the said plantations, called Wellington and Waterloo, I have given to the said John Tayloe, Jr., in manner aforesaid: Provided, however, that if my said grandson shall die unmarried, under age, and without issue, that then in that case the estate and the property hereby left him is to pass and revert to my own right heirs; and it is also hereby directed and declared that the estate left to my said grandson shall be chargeable with four hundred dollars ($400) per annum, another part of the said annuity of twelve hundred dollars to be paid to my daughter-in-law, Maria Tayloe, mother of said John Tayloe, Jr., for and during her natural life, and no longer, and to be paid in the manner hereinbefore directed.

It is to be understood and is hereby declared to be my will and intention that in the various devises which I have made to my sons respectively they are each of them to take respectively all the stock,
21 slaves, utensils, tools, implements, furniture, and plate commonly used and enjoyed with the plantation or plantations so respectively devised to each of them; and to prevent any misunderstanding as to my meaning my son William is to surrender with the estates called Windsor, South Hill, and Society Hill the slaves, stocks, &c., which I have let him have to his brother Benjamin O. My vessel belonging to Mt. Airy and the Rappahannock, with all her tackle, hands, and appurtenances, I give to my son, William H. Tayloe, and my vessel belonging to Neabsco and the Potomack, with all her tackle, hands, and appurtenances, I give to my son, Benj. Ogle Tayloe, and hope they will be liberal in the loan thereof, as occasion may require, to their other brothers.

I give and devise to all my sons in joint tenancy my Brunswick and Cloverdale estate in Botetourt county, Virginia, including the iron works, plantations, lands, slaves, stocks, utensils, tools, and im-

plements of every description, meaning hereby to give the whole establishment, real and personal, with all and singular the appurtenances, to be worked, cultivated, used, and enjoyed by them jointly for their joint benefit.

I give and bequeath to all my sons all my tradesmen and mechanics, such as smiths, carpenters, joiners, wheelwrights, ship car-
22 penters, masons, shoemakers, to be equally divided amongst them, laying them in lots as equally as may be in value and number, and the lots so arranged to be chosen by my sons according to seniority, the eldest to have the first choice, and so on in succession to the youngest, until the whole of the said lots have been chosen by my said sons or their guardians for them. The millers employed at the respective mills are to go with the mills, and the mills are to be considered as parts or appurtenances of the plantations to which they respectively belong.

I devise to the children of my niece, Jane Beverly, dec'd, who was the daughter of my deceased sister, Mrs. Eleanor Wormley, all my Kentucky lands, to be equally divided amongst them; and in case any of them should die without issue living at the time of his or her death, then the share of such child so dying shall go to the surviving children — to the issue of such of them as may be dead; and in case of the death of all of the said children without issue living at the time of their deaths, then the said Kentucky lands to revert to my own right heirs.

Having at the time of the intermarriage of my daughter,
23 Mrs. Henrietta Hill Key, settled upon her ten thousand dollars, I give and bequeath to the said Henrietta ten thousand dollars more, to be settled upon her to her own separate use during her life, and after her death upon her children and their descendants. I wish, however, to be taken as a part of her ten thousand dollars now bequeathed about fifteen hundred and seventy-two dollars ninety and a half cents, which I paid on account of her husband a short time since, and for which a settlement of slaves has already been made upon her, and also my other sums of money which I have heretofore paid or may hereafter pay or become liable for on account of her said husband.

These sums are to form a part of the ten thousand dollars hereby directed to be settled, and are not to be taken in addition thereto.

I give and bequeath to my daughters, Catherine, Elizabeth M., Virginia, and Anne O. Tayloe, twenty thousand dollars apiece, to be vested in United States bank stock or in Government securities, which stock or securities I do hereby direct that my executors hereinafter named shall hold in trust for my said daughters respectively, and shall apply the dividends, interest, or profits of the said
24 stock or securities to the use and benefit of my said daughters, Catherine, Elizabeth M., Virginia, and Anne O. Tayloe, severally and respectively, as the said dividends, interest, or profits shall accrue, and from and after the intermarriage of any of them, then my said executors shall hold the said bank stock or other securities belonging to said daughters so marrying in trust for the following purposes—that is to say: In trust for the maintenance of her and

her husband during their joint lives, then in trust for the survivor of the said husband and wife during his or her life, and after the death of such survivor, then in trust for such issue as she may leave at the time of her death; and in case she shall die without leaving such issue, then in trust for her surviving sisters, my other daughters, and the issue of any deceased sister, such issue taking such share as the deceased sister whom they represent would have taken had she been alive to take, and it is my intention that the stock and securities, as also the dividends, interest, or profits thereof, shall be utterly free from the power or control of the husbands of my said daughters.

And the better to secure the payment of these my daughters' fortunes, I do hereby direct that if the funds hereinafter
25 particularly appropriated for the payment of debts and legacies shall be insufficient for the payment of debts and legacies my estate generally must be charged to make up the deficiency to my said daughters.

For the payment of my debts and legacies the following estate is constituted and devised as a fund set apart for that purpose, to be sold or otherwise disposed of by my executors or such of them as may act, viz: All my estate, real and personal, at Middlebrooke, Manokin, or the money due for it; my property at the village of Occoquan; my houses and lots in the city of Washington (including my dwelling-house after the death of my wife); the furniture at my said dwelling-house after my wife's death, except the plate; my farm near Washington, called Petworth, with all the stocks, slaves, utensils, and appurtenances, after my wife's death; all the money I may have on hand at my death, whether deposited in bank or elsewhere; all debts due me, whether by bond, bill, mortgage, or otherwise; my bank stock of every kind; all Government securities and United States stock of every description; all the iron which I may have for sale at the Cloverdale Iron Works or elsewhere, or which may be in blast at the time of my death; all my blooded
26 horses which I may have; all my road, river, or bridge stock, my crops, and all the rest and residue of my estate of whatever kind, real or personal, not in this my will specifically devised or bequeathed; and my executors, or such of them as may qualify, are fully empowered and are authorized to see and dispose of the real estate contained in this clause, and to apply the money arising therefrom to the purposes intended, viz., to the payment of debts and legacies.

The plate which belongs to the house in Washington, wherein we reside, I wish to be equally divided, after my wife's death, among all my sons.

I give and bequeath to John Tayloe Lomax, Jr., and Presley Thornton Lomax, sons of my nephew, John T. Lomax, five hundred pounds, Virginia currency, apiece, and the like sum to each of my grandsons, John Tayloe Key, Henry Sothoron Key, Philip Key, and William Ogle Key.

I wish my stock of liquors and spirits on hand at my death to be equally divided among all my sons.

I will that my body servant, Archy, may be liberated and
27 may be allowed one hundred dollars per annum during his life. My motive for liberating him is his long-tried fidelity, especially since I have been in bad health, and upon one occasion he was the means, under Providence, of saving my life.

Should there be any surplus of the fund which I have hereinbefore set apart for the payment of debts and legacies, after that purpose has been obtained, I bequeath the same to be equally divided among my sons (other than the son to whom Mt. Airy is devised), it being intended if there be such surplus to afford out of it to my said sons (other than the devisee of Mt. Airy) the means of building or repairing dwelling-houses on their respective plantations, in which respect the Mt. Airy estate has greatly the advantage of all the rest.

As my wife is, by a preceding clause of this my will, entitled to a dower in the real estate directed by other clauses of this my will to be sold, the better to ascertain and settle the value of my wife's interest for her life in said real estate or in any slaves which may be sold, it is my will that whenever there shall be such sale or previous thereto my wife shall nominate one impartial, intelli-
28 gent, and upright person, and my executors shall nominate another, and that those persons so nominated shall appoint a third, who shall estimate fairly and impartially the value of my said wife's dower interest in such lands and slaves so proposed to be sold, and they shall thereupon in writing award the amount to be paid her by my executors of the sales; whereupon she shall release to them or to the purchaser her interest in the said lands or slaves, and out of the sales thereof they shall pay her the amount so awarded.

I do hereby most earnestly conjure my children to cherish a sincere filial and paternal affection for their mother and each other; to avoid lawsuits among themselves and with other persons; to avoid speculation, horse-racing, and all kinds of gaming; to be sober, honest, and religious.

I do hereby constitute and appoint my friend and brother-in-law, Benj. Ogle; my nephew, John Tayloe Lomax, and my sons, Benj. Ogle Tayloe, William H. Tayloe, and Edward T. Tayloe, executors of this my last will and testament, and, as the courts can at any time require security of them for their faithful administration whenever their conduct may show that it ought to be re-
29 quired, I do not wish them to be compelled to give security upon their qualification.

The foregoing I do declare to be my last will and testament.

In witness whereof I have subscribed my name hereto in the presence of the attesting witnesses this twenty-first day of July, in the year of our Lord one thousand eight hundred and twenty-four, and have hereunto affixed my seal.

JOHN TAYLOE. [SEAL.]

The foregoing last will and testament of John Tayloe was signed,

sealed, published, and declared by him in our presence, and we have each of us subscribed this our attestation in his presence.

PHINEAS BRADLEY.
O. B. BROWN.
P. J. BRADLEY.
THOS. B. ADDISON.

I have (as I think I have a right to do) taken possession of Mt. Airy, with the growing crops thereon, in order that I may be the better enabled to provide more comfortably and effectually for the family of my deceased son, John Tayloe, Jr. It is therefore my will that John Tayloe, my grandson, in consideration of the greater benefits which he will derive from me under this my will
30 and otherwise, do, on no account and in no way whatever, seek to charge either my estate or the administrator of his father, the said John Tayloe, deceased, or to demand from either any account of said crop.

JOHN TAYLOE.

DISTRICT OF COLUMBIA, } *To wit:*
Washington County, }

Be it remembered that on this 14th day of March, in the year 1828, Phineas Bradley, Obodiah B. Brown, P. J. Bradley, and Thomas B. Addison, the subscribing witnesses to the aforegoing last will and testament of John Tayloe, late of Washington, in the Territory of Columbia (formerly of Mt. Airy, Virginia), deceased, severally made oath on the Holy Evangels of Almighty God that they did see the testator therein named sign and seal this will; that he published, pronounced, and declared the same to be his last will and testament; that at the time of his so doing he was, to the best of their apprehensions, of sound and disposing mind, memory, and understanding, and that they respectively subscribed their names as witnesses to this will in the presence and — the request of the testator and in the presence of each other.

Sworn in open court.
Test:

HENRY C. NEALE, *Reg. Wills.*

31 I, John Tayloe, of Washington, do hereby declare this present writing to be a codicil to my will which I have heretofore executed, and direct the same to be annexed thereto and taken as a part thereof.

James Baker, Esq., having intermarried with my daughter Catherine, I have given him, in part of the fortune intended to be bequeathed to my said daughter, the sum of five thousand dollars, and my said son-in-law having expressed a wish that all the rest of the fortune intended for his said wife should be settled upon her, I have annexed this codicil for the purpose of carrying that wish into effect, and do hereby declare that all estate and interest whatsoever bequeathed by my said will to my said daughter Catherine (except the five thousand dollars given, as aforesaid, in part thereof) shall be taken and received to be in trust to my said daughter Catherine

to her seperate use and to her representatives, as designated and limited in that clause of my will in which I have made provision for my daughters, it being my intention that no further part of the said Catherine's fortune shall be enjoyed by the said James Baker, but as the seperate estate of his wife.

32 In witness whereof I, the said John Tayloe, have to this my codicil set my hand and seal this fourth day of March, in the year of our Lord 1825.

JOHN TAYLOE. [SEAL.]

Signed, sealed, and published by the said John Tayloe as and for a codicil to be considered as part of his last will and testament in the presence of us, who have subscribed our names in his presence.

ROBERT BEVERLY.
BENJ. OGLE, JUN'R.
ED. T. TAYLOE.
RICH'D FORREST.

DISTRICT OF COLUMBIA, *Washington County,* } *To wit:*

On this 14th day of March, in the year 1828, Richard Forrest, one of the subscribing witnesses to the aforegoing codicil to the last will and testament of John Tayloe, deceased, made oath on the Holy Evangels of Almighty God that he did see the testator therein named sign and seal the said codicil; that he published, pronounced, and declared the same to be a codicil to his last will and testament; that at the time of his so doing he was, to the best of his apprehension, of sound and disposing mind, memory, and understanding, and that he, together with Robert Beverly, Benj. Ogle, Jr., and Edward T. Tayloe, the other subscribing witnesses to this codicil, in the

33 presence and at the request of the testator and in the presence of each other, —.

Sworn in open court.
Test: HENRY C. NEALE, *Reg. Wills.*

January —, 1827.—Since this my will was executed I have made some purchases of real property, and am advised that without a republication of my will such after-purchased estate will not pass by my will, as it is my wish that it should. I have, therefore, thought proper to republish the same, as I hereby do by subscribing my and affixing my seal in the presence of the attesting witnesses, who have in my presence subscribed their names to this writing, evidencing the said republication.

JOHN TAYLOE. [SEAL.]

The foregoing paper was executed by John Tayloe and published in our presence, and we have hereunto subscribed our names as attesting witnesses in his presence.

JNO. TAYLOE LOMAX.
RICH'D FORREST.
HENRY HUNTT.
JNO. M. THOMAS.

DISTRICT OF COLUMBIA,
County of Washington, } *To wit:*

On this 14th day of March, 1828, Richard Forrest, one of
34 the subscribing witnesses to the aforegoing codicil to the last will and testament of John Tayloe, deceased, made oath on the Holy Evangels of Almighty God that John Tayloe, the testator therein named, did in his presence sign and seal this codicil to his last will and testament; that he published, pronounced, and declared the same to be a codicil to his last will and testament. At the same time appeared Henry Huntt and John M. Thomas, two others of the subscribing witnesses to said codicil, and severally made oath on the Holy Evangels of Almighty God that the testator therein named did in their presence acknowledge the signing and sealing of said instrument of writing to be his act and deed and published and declared the same to be a codicil to his last will and testament, and that they, the deponents, respectively subscribed their names as witnesses to the same in the presence and at the request of the testator and in the presence of each other.

Sworn in open court.

Test: HENRY C. NEALE, *Reg. Wills.*

The following codicil to be taken as part of my will:

It will be seen by reference to the body of my will that I
35 devised to my son, George Plater Tayloe, the plantation called Gwynnfield, with the stocks, slaves, utensils, &c., commonly used and enjoyed with the plantation. He has, however, lately expressed his wish to take my Cloverdale estate, with the furnace, and the Madison tract and the stocks, slaves, utensils, &c., upon those estates, instead of the former devise. Being willing on my part to gratify this wish, an informal understanding has already taken place between him and me upon this subject. According to that understanding Gwynnfield, together with all the property belonging to it, which would have passed by my will, in case of my death, to my son George, is to be valued by Mr. Benj. Boughton, who will also value the Cloverdale estate, the furnace, and the Madison tract, together with all the stocks, slaves, utensils, tools, implements, furniture, and plate commonly used and enjoyed with these estates. My son George is to take this property in lieu of that which was heretofore designed for him at Gwynnfield. He is to have possession of it on the 1st day of January, 1829, when the valuation is made. My son George is to execute his bond to me, with condition to pay the difference in value in annual instalments of two hundred tons of pig-iron, to be delivered at Beale's
36 bridge, on James river, as soon as convenient after the pigs are made at the furnace, which are to be estimated at the market price at the time and place of delivery. This delivery is to be thus annually made of the iron until the whole estimated difference in values of the property on the one side or the other have been satisfied. It is also understood between us that my said son shall have the crops in 1828 on the estates which he is to take under this arrangement, or so much of those crops as may be necessary for the

supply of those estates. If there remains any surplus the same is to be sold for my benefit.

I am to pay off all debts against the furnace and the other plantations which are mentioned above. My son is also to furnish pigs for the employment of the forge; and for these supplies (over and above the two hundred tons of pigs mentioned above) I am to deliver him at the forge one ton of bar iron for every four tons of pigs. Such is the understanding between us, and should I die before the arrangement is fully completed I wish it to be carried into effect, so that my son will then take the Cloverdale tract, the furnace, and the Madison tract, with all the houses, stocks, slaves, utensils, tools, implements, furniture, and plate commonly
37 used and enjoyed at these estates, instead of what was heretofore devised to him at Gwynnfield. In regard to the Forge property, commonly called the Brunswick Forge, with the stocks, slaves, utensils, tools, implements, &c., belonging to it, it is my wish that my son George may have the election to take all of that property also at a fair valuation, which valuation I wish should be made by Mr. Benjamin Boughton or some other competent, impartial person, and my said son, in case he shall elect so to take that property, must account for the value as a part of the fund for the payment of debts and legacies. Should I not before my death have disposed of the tract of land called Mortsingers I wish my said son George to take that also at valuation in like manner for payment of debts and legacies.

My son George Plater Tayloe taking Cloverdale and those other estates as contemplated, the devise which was made to him of Gwynnfield and the property appurtenant to it will be revoked. As to the latter I wish my son Henry Augustine Tayloe to make election whether he will take Gwynnfield, with the property appurtenant to it, or will take the estate called Oaken Brow, which
38 was devised, with the property appurtenant to it, in my will to my said son Henry. If he shall elect to take Gwynnfield, then the devise which was made of Oaken Brow and city lots, &c., to my said son Henry will be revoked, and in that event it is my desire that my son Charles shall take the Oaken Brow estate and the stocks, slaves, and the property appurtenant to it instead of Neabsco, Deep Hole, and The Farm, and the devise which was made of these and the property appurtenant to them unto the said Charles shall be revoked; and all that property, real and personal, contained in that devise shall fall into my residuary estate and constitute a part of the fund for the payment of debts and legacies; or if my son Henry shall prefer holding Oaken Brow, then I devise Gwynnfield in like manner, with the property appurtenant to it, to my son Charles; and in that event also Neabsco, Deep Hole, and The Farm and the other property appurtenant to these plantations will sink into the residuum for the purposes aforesaid.

In my will I had devised to all my sons, in joint tenancy, my estates in Botetourt. That clause of my will is intended to be revoked by the disposition of that property which is made in this codicil.

39 I have conveyed to my son, Benj. O. Tayloe, a lot in the city of Washington on the United States Bank square, and have expended much money in building him a house upon it. My said son is to be charged with the value of the lot and the money which I have expended in the building as against his share of the surplus which is directed in the 9th page of my will to be divided among certain of my sons; but shall that charge exceed his share of that surplus he is not to be answerable beyond that share.

The foregoing paper I do publish and declare as a codicil to my last will and testament and have hereunto affixed my hand and seal this — day of December, 1827.

JOHN TAYLOE. [SEAL.]

The foregoing paper was executed by John Tayloe and published in our presence and we have hereunto subscribed our names as attesting witnesses in his presence this — day of December, 1827.

RICH'D FORREST.
HENRY HUNTT.
JOHN M. THOMAS.

DISTRICT OF COLUMBIA, *Washington,* } *To wit:*

On this 14th day of March, in the year 1828, Richard Forrest, one of the subscribing witnesses to the aforesaid codicil to the
40 last will and testament of John Tayloe, dec'd, made oath on the Holy Evangels of Almighty God that John Tayloe, the testator therein named, did, in his presence, sign and seal this codicil to his last will and testament. At the same time appeared Henry Huntt and John M. Thomas, two others of the subscribing witnesses to said codicil, and severally made oath on the Holy Evangels of Almighty God that the testator therein named did, in their presence, acknowledge the signing and sealing of said instrument of writing to be his act and deed and published and declared the same to be a codicil to his last will and testament, and that they, the deponents, respectively subscribed their names as witnesses thereto in the presence and at the request of the testator and in the presence of each other.

Sworn in open court.

Test: HENRY C. NEALE, *Reg. Wills.*

41 EXHIBIT W. T. S. No. 2. Filed May 27, 1885. R. J. Meigs, Clerk.

Copy of the Will of Virginia Tayloe.

160 LA FAYETTE AVENUE, *May,* 1872.

DEAR ANNE: I wish you and your family to occupy my house (160 La Fayette avenue) free of rent. I will retain my home with you, my board and lodging being equivalent to the rent. In the event of our deaths I bequeath my house, furniture, and all that

belongs to me in it to your dear daughter and my god-daughter, Virginia Tayloe Lewis. I wish to secure her from pecuniary want in the future. I also bequeath to her the legacy of my father, twenty thousand dollars invested in Government securities and yielding an income of twelve hundred dollars in gold. There has been difference of opinions as to my having the right to bequeath this legacy. I have consulted Mr. Bayard Smith and Mr. Augustin J. Smith on the subject, and they think I have an undoubted right to dispose of it as I please.

If necessary, a legal paper can be drawn up to this effect.

42 To meet the payments for my house I have twenty-five hundred dollars invested by Mr. Augustin J. Smith at ten per cent. interest, a Chesapeake and Ohio Canal bond worth five hundred dollars, and (if necessary) my lots in Bayfield.

I hope this note is all you require.

Your affectionate sister, VIRGINIA TAYLOE.

43 EXHIBIT W. T. S. No. 3. Filed May 27, '85. R. J. Meigs, Clerk.

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

DISTRICT OF COLUMBIA, *To wit:*

The United States of America to all persons to whom these presents shall come, Greeting:

Know ye that on the 22d day of May, in the year of our Lord 1885, administration of all the goods, chattels, and credits of Virginia Tayloe, late of the District of Columbia, deceased, was by the supreme court of the District of Columbia aforesaid granted and committed unto Virginia T. Lewis, the said Virginia T. Lewis, as administratrix *c. t. a.* of said Virginia Tayloe, deceased, having first executed a bond to the United States, with good sureties approved by the said court, in the penalty of thirty thousand dollars, conditioned for the faithful performance of the trust in her reposed, and having also taken the required oath.

Witness A. B. Hagner, justice, holding the special term of the said supreme court for orphans' court business, this 22nd day of May, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States the one hundred and ninth.

Seal of S. C. D. of C.

Test: H. J. RAMSDELL,
Register of Wills for the District of Columbia.

44 Filed May 27, '85. R. J. Meigs, Clerk.

WASHINGTON, D. C., *May 22d*, 1885.

William Tayloe Snyder, Esq., trustee for Virginia Tayloe, deceased.

SIR: Having been appointed administratrix with the will annexed

of Miss Virginia Tayloe, deceased, I herewith enclose an exemplification of my letters of administration, and hereby made demand upon you to deliver to me immediately all property held by you as trustee of the said Virginia Tayloe.

Respectfully, VIRGINIA TAYLOE LEWIS,
Administratrix with Will Annexed of Virginia Tayloe, Deceased.

45 EXHIBIT W. T. S. No. 4. Filed May 27, '85. R. J. Meigs, Clerk.

WASHINGTON, D. C., *March 13th*, 1885.

Wm. Tayloe Snyder, Esq.

DEAR SIR: I suppose that you have heard of the verdict given by the jury this morning in the Virginia Tayloe will case in favor of the will. Miss Lewis will now get an administrator, with will annexed, appointed, and will probably get the letters herself, whereby, as administratrix of Miss Tayloe, she will demand of you all moneys held by you as trustee of her aunt. You know that Miss Baker and Madame de Penâsco claim that under the will of their father, Col. John Tayloe, Miss Virginia Tayloe's $20,000 legacy goes to the surviving sisters and the representatives of surviving sisters. This claim is not a new one, but arises from the construction of the will entertained by all the members of the Tayloe family—a construction given to the will by John Tayloe Lomax, a very distinguished Virginia lawyer, especially in real-estate matters. Please look at the will of Col. Jno. Tayloe (on record here) and the codicils thereto, especially the Baker codicil. You will see
46 that provision is amply made for all the sons and for Mrs. Key, and then the four daughters, Catherine, Elizabeth M., Virginia, and Anne O., are each given $20,000, which amount goes upon the death of each to the surviving sisters in a certain event. Is Mrs. Key included by the testator in the list of surviving sisters? If so, as there were five daughters, the survivors (or their issue) of Miss Virginia take the legacy of $20,000 enjoyed by her during her lifetime or what thereof remains, and thus the fund would be divided into four parts, the Lewis family—Miss Lewis, Mr. Henry G. Lewis, and Mr. Trapière Lewis—getting, together, a one-fourth part, and the administrator, with will annexed, of Miss Lewis getting only the unused income from this $20,000 which had accrued during Miss Tayloe's lifetime. If Mrs. Key's representatives do not take anything, then the Lewis family would get a one-third portion, the $20,000 being divided among the representatives of Miss Virginia's three sisters named in the $20,000-legacy paragraph of their father's will. I represent Miss Tayloe's nieces in Spain, Miss Baker, and Mm. de Penâsco, and I hereby demand of you one-fourth
47 of the $20,000 and of interest accrued thereupon since the death of Miss Tayloe, as I have heretofore demanded and as I did demand soon after Miss Tayloe's death. Please let me know what you intend to do. It may be well for you to see Mr. Leigh Robinson, who represents Mrs. Carter's heirs, and Mr. Garnett, who rep-

resents Miss Lewis, and see what would be the best, the cheapest, and the most expeditious way of getting the will of Col. Jno. Tayloe construed. You spoke once to me about filing a bill of interpleader. I doubt whether this can be done. It certainly cannot be done unless the administrator, with will annexed, to be appointed takes simply the accumulated income, if any accrue, due during Miss T.'s lifetime and the Lewis family join in giving a receipt for one-fourth of capital or Miss Lewis takes one-twelfth, with assent of administrator.

Y'rs, G. F. APPLEBY.

48 EXHIBIT W. T. S., No. 5. Filed May 27, '85. R. J. Meigs, Clerk.

WASHINGTON, D. C., *May 23rd*, 1885.

To William Tayloe Snyder, Esq., trustee, &c.

DEAR SIR: As attorney for Robert Carter Wellford, Beverly R. Wellford, and Armistead Wellford, I formally make demand upon you for the portion of the trust fund in your hands which, in right of their grandmother, Elizabeth Mary Carter (*nee* Tayloe), they claim accrued to them upon the death of their aunt, Virginia Tayloe, under the will of their ancestor, John Tayloe.

Respectfully, LEIGH ROBINSON.

49 EXHIBIT W. T. S., No. 6. Filed May 27, '85. R. J. Meigs, Clerk.

WASHINGTON, D. C., *May 26th*, 1885.

Mr. William Tayloe Snyder, trustee, &c.

DEAR SIR: In behalf of Miss Etta Tayloe Smith, I hereby make demand upon you for such portion of the trust fund in your hands as she may be entitled to in right of her grandmother, Henrietta Hill Key (*nee* Tayloe).

Truly yours, RANDALL HAGNER.

Subpœna to Ans.

50 In the Supreme Court of the District of Columbia, May 27th, 1885.

WM. TAYLOE SNYDER, Trustee, Complainant,
against
ADELAIDE E. BAKER *et al.*, Defendants. } No. 9464. Equity Docket 24.

The President of the United States to Adelaide E. Baker, Sarah G. Baker, Penâsco de Galé, Norberto Penâsco de Galé, R. Carter Wellford, B. Randolph Wellford, Armistead N. Wellford, Virginia T. Lewis, administratrix, w. a., Virginia T. Lewis; Henry G. Lewis, Trapiere S. Lewis, Etta T. Key, Etta T. Smith, Joseph Hall Key, Charles E. Key, and Harriet H. Key, and all unknown heirs of H. G. S. Key, and Henrietta H., his wife, defendants:

You are hereby commanded to appear in this court at its first

special term, occuring twenty days after service of this subpœna, and answer the exigency of the original bill, under pain of attachment and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

[Seal S. C. D. of C.]

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS, *Ass't Clerk.*

MEMORANDUM.—That the defendant herewith served is to enter appearance in this suit, in the clerk's office, on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

51 *Marshal's Return.*

All the defendants within named and all unknown heirs of H. G. S. Key and Henrietta, his wife, not to be found.

May 27th, 1885.

CLAYTON McMICHAEL, *Marshal.*

52 *Order for Appearance of Absent Defendant. Filed May* 27, '85. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia, the 27th day of May, 1885.

WM. TAYLOE SNYDER, Trustee,
vs.
ADELAIDE E. BAKER *et al.* } No. 9464. Eq. Doc. 24.

On motion of the plaintiff, by Mr. Charles D. Fowler, his solicitor, it is ordered that the defendants, Adelaide E. Baker, Sarah G. Penâsco de Galé, Norberto Penâsco de Galé, R. Carter Wellford, B. Randolph Wellford, Armistead N. Wellford, Virginia T. Lewis, administratrix, w. a., Virginia T. Lewis; Henry G. Lewis, Trapiere S. Lewis, Etta T. Key, Etta T. Smith, Joseph Hall Key, Charles E. Key, and Harriet N. Key, and all unknown heirs of H. G. S. Key and Henrietta H. Key, his wife, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the court: A. B. HAGNER, *Justice, &c.*

True copy.
Test: —— ——, *Clerk, &c.*

53 *Answer of Virginia T. Lewis, Adm., et als. Filed Oct. 10th, '85. R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia, Holding a Special Term in Equity.

WILLIAM TAYLOE SNYDER, Trustee, *vs.* ADELAIDE E. BAKER *et al.* } No. 9464.

The joint and several answers of Virginia T. Lewis, administratrix, with will annexed, Virginia T. Lewis; Henry G. Lewis, and Trapiere S. Lewis to the bill of complaint in this cause filed.

These defendants, answering, say—

They admit the allegations contained in the first, second, third, fourth, and fifth paragraphs of the bill.

They believe that the extract quoted in the sixth paragraph of the bill from the will of John Tayloe is correctly set out, but for certainty they refer to the will itself, which is on file in the office of the register of wills of the District of Columbia, and ask that the same may be read at the hearing of this cause.

They admit the allegations contained in the seventh paragraph of the bill.

54 They admit the allegations contained in the eighth paragraph of the bill, and, further answering, say that the defendant, Virginia T. Lewis, as administratrix, with the will of Virginia Tayloe annexed, was and is entitled to receive from the said complainant all the said property held by him as trustee, and to dispose of the same in accordance with the will of the said Virginia Tayloe, deceased.

That these defendants have no personal knowledge of the facts alleged in ninth, tenth, and eleventh paragraphs of the bill, but have no reason to doubt the same; and, further answering, these defendants say that if such demands were made on the complainant, they were made without any right, title, or interest on which to found them; and, in addition, in answer to the tenth paragraph, they say that the defendants, R. Carter Wellford, B. Randolph Wellford, and Armistead N. Wellford, grandchildren of a sister of the said Virginia Tayloe, deceased, there being brothers, nephews, and neices, living, have no interest in the trust fund under the laws of this District, even under the construction claimed by them or their counsel of the will of John Tayloe, deceased.

55 In answer to the twelfth paragraph these defendants admit that Virginia T. Lewis, as administratrix, with the will of Virginia Tayloe annexed, demands the whole of the fund, and contends that the said Virginia Tayloe had a right to dispose of by will the legacy of twenty thousand dollars left her by her father, the said John Tayloe, and the said Virginia Tayloe having died unmarried, and these defendants aver that such demand is well founded, and that the said Virginia Tayloe had the full right so by will to dis-

pose of her property willed to her by her said father, John Tayloe, and that her right so to do is clear and full under the will of her said father, to which will reference is hereby made, and that the said fund now in the hands of the complainant rightfully belongs and should be paid over to the defendant, Virginia T. Lewis, as administratrix of Virginia Tayloe, with will annexed.

These defendants have no personal knowledge of what contention or claim other persons may make for said fund, but aver that if any such claim or contention is made it is without right and totally unfounded.

These defendants further aver that there is no room for
56 doubt as to the construction of the said will of John Tayloe, deceased and the distribution of the fund to the administratrix of the said Virginia Tayloe, deceased, and they so pray this court to decree, and also to allow them their costs in this cause incurred.

HENRY WISE GARNETT,
Sol'r for Defendants.

57 *Ans. of R. Carter Wellford, B. R. Wellford, & A. N. Wellford.*
Filed Dec. 15, 1885. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

WILLIAM TAYLOR SNYDER, Trustee,
v.
ADELAIDE E. BAKER *et al.*
} 9464, Eq. Doc. 24.

The joint and several answers of R. Carter Wellford, B. Randolph Wellford, and Armistead N. Wellford to the bill of complaint.

These defendants are informed and believe that the averments in the bill are substantially correct, and that since the filing of the bill a portion of the fund in the hands of the complainant has been paid over to the defendant, Virginia T. Lewis. They refer to the will of John Tayloe and the codicils thereto, and ask leave to bring the same into court at the hearing of this cause. These defendants aver that the sons of the said John Tayloe were very amply provided for by the said will, and the properties by them received comprised the bulk of the estate; that it was always considered in the family that the legacy of any daughter, upon her death without issue, was to go to her surviving sisters, and that this view, which was just and natural in itself, was further supported by the legal opinion of
58 John Tayloe Lomax, one of the executors of the will and an eminent judge and jurist of the State of Virginia, soon after the probate of the will.

These defendants do contend, as stated in the bill, that upon the whole will of the said Col. John Tayloe it is clear that the testator intended his daughters' portions, in case of any daughter dying without issue surviving her, to go to the surviving daughters or their respective issues.

R. CARTER WELLFORD,
B. RANDOLPH WELLFORD,
ARMISTEAD N. WELLFORD,
By LEIG H ROBINSON, *Their Solicitor.*

59 *Ans. of Adelaide E. Baker et als. Filed Dec.* 15, '85. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

SNYDER
vs.
BAKER *et al.* } 9464, Eq. 24.

The defendants, Adelaide E. Baker and Sarah G. Baker de Penâsco, and Norberto Penâsco de Galé, answering the bill of complaint.

The defendants are informed and believe that the averments in the bill contained are correctly stated; that a part of the fund has since the filing of the bill been paid to Virginia Lewis. They refer to the will of John Tayloe and the codicils thereto, and ask the court to let them bring the original will and the codicils thereto into court at the hearing of this cause, so that the court, in construing his said will and the codicils, may not be led into error by looking at an unauthenticated copy thereof or by considering a portion only of said will.

These defendants aver that the sons of the said John Tayloe were very amply provided for by the said will, and the properties by them received comprised the bulk of his estate; that it was always
60 considered in the family that the legacy of any one of the daughters dying without issue was to go to daughters surviving in exclusion of sons; that an opinion to this effect was given by John Tayloe Lomax, one of the executors of the will and a distinguished lawyer in his day, soon after the probate of the will. In the codicil to the will, dated the fourth day of March, 1825, the said John Tayloe states that James Baker having intermarried with his daughter Catherine, he gives a part of her fortune to James Baker absolutely and the rest to his daughter Catherine "to her seperate use and to her representatives as designated and limited in that clause of" (my) his will in which he had made provision for his daughters, and that said James Baker shall enjoy no further part of the said Catherine's fortune but as the seperate estate of his wife. These defendants submit that as the testator wished his married daughter, Catherine Baker, to have the property on the same terms as the daughters mentioned in the clause of the will providing for daughters, and, as the daughters mentioned in said clause were single at the time of the making of the will, and, with the
61 exception of Catherine, were single at the time of the making of the codicil, which facts they hereby aver, he intended that the designation of representatives in his will contained as to his daughters should apply whether his daughters died unmarried or not, so that the sons, already amply provided for, should not share any more of his estate whilst there were surviving sisters; that the $20,000 given to a daughter dying unmarried, and, of course, without issue, should take the same destination as the $20,000 of a daughter surviving a husband and dying without any issue her surviving

They refer to the notice given complainant and the demand upon him by their counsel, which is exhibited with the bill, and make the same part hereof.

ADELAIDE E. BAKER,
SARAH G. BAKER PENASCO,
By their solicitor, G F. APPLEBY.

62 *Ans. of Guardian ad litem for Etta T. Smith, Infant Def., & Affidavit. Filed Feb. 24th, 1885. R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

WILLIAM TAYLOE SNYDER, Trustee, Complainant, *vs.* ETTA T. SMITH *et al.*, Defendants. } Equity, No. 9464.

The answer of James W. Greer, guardian *ad litem* as appointed by the court for Etta T. Smith, an infant defendant, respectfully shows to the court—

That said Etta T. Smith is an infant, and is therefore unable to answer the said bill of complaint in this cause filed, and she therefore submits her rights to the protection of the court.

JAMES W. GREER,
Guardian ad litem for Etta T. Smith, an Infant Defendant.

Sworn to and subscribed before me this 24th day of February, A. D. 1886.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clerk.*

63 *Proof of Publication Against Abs. Def's. Filed Jan. 30th, 1886. R. J. Meigs, Clerk.*

WASHINGTON, D. C., *June 27th*, 1885.

Mr. Chas. D. Fowler, sol'r, to Washington Law Reporter, 631 F street, Dr.

To pub. abs. def. notice, Snyder *vs.* Baker *et al.*, eq. 9464, $5.00.

Rec'd payment,

JOHN L. GINCK.
D. M. O.

UNITED STATES OF AMERICA, *District of Columbia*, } *ss:*

On this twenty-seventh day of June, A. D. 1885, personally appeared before me, the undersigned, a U. S. commissioner, David M. Oliver, in and for the District aforesaid, being personally well known to me, and made oath in due form of law to the following statement, viz: That affiant is one of the publishers of the "Washington Law

Reporter," a newspaper published in the city of Washington, D. C.; that the annexed notice was published in said "Washington Law Reporter" once a week for three successive weeks, as follows: June 13th, 20th, and 27th, 1885.

DAVID M. OLIVER.

Sworn and subscribed before me the day and year above written.
[Seal U. S. Com., D. of C.]

LUCIAN O'BRIEN,
United States Com'r.

64 In the Supreme Court of the District of Columbia the 27th day of May, 1885.

WM. TAYLOE SNYDER, Trustee,
v.
ADELAIDE E. BAKER *et al.*
No. 9464. Eq. Doc. 24.

On motion of the plaintiff, by Mr. Charles D. Fowler, his solicitor, it is ordered that the defendants, Adelaide E. Baker, Sarah G. Penâsco de Galé, Norberto Penâsco de Galé, R. Carter Wellford, B. Randolph Wellford, Armistead N. Wellford, Virginia T. Lewis, administratrix w. a.; Virginia T. Lewis, Henry G. Lewis, Trapiere S. Lewis, Etta T. Key, Etta T. Smith, Joseph Hall Key, Charles E. Key, Harriet H. Key, and all unknown heirs of H. G. S. Key and Henrietta H., his wife, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day, otherwise the cause will be proceeded with as in case of default.

By the court: A. B. HAGNER, *Justice.*

A true copy.
Test: R. J. MEIGS, *Clerk.*

65 *Decree pro confesso against Etta T. Key, Joseph Hall Key, C. E. Key, H. H. Key, & All Unknown Heirs of H. G. S. Key & H. H., His Wife. Filed Jan. 30th, 1886. R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

WM. TAYLOE SNYDER, Trustee,
vs.
ADELAIDE E. BAKER *et al.*
No. 9464. Eq. Doc. 24.

The order of publication heretofore passed in this cause having been duly published ordering the defendants herein to enter their appearance herein on or before the first rule day occurring forty days after the date of said order, to wit, the 27th day of May, 1885, and the defendants, Etta T. Key, Joseph Hall Key, Charles E. Key, Harriet H. Key, and the unknown heirs of H. G. S. Key and Henrietta H., his wife, having failed to appear and answer the bill of complaint, it is this 30th day of January, A. D. 1886, by the court ordered, adjudged, and decreed that said bill of complaint be, and the same is hereby, taken *pro confesso* against the said defendants.

CHARLES S. JAMES, *Justice.*

66 *Subpœna to Answer.*

In the Supreme Court of the District of Columbia, Feb'y 23rd, 1886.

WM. T. SNYDER *et al.*, Complainants, *against* A. E. BAKER *et al.*, Defendants. } No. 9464. Equity Docket 24.

The President of the United States to Etta T. Smith, defendant:

You are hereby commanded to appear in this court at its first special term occurring twenty days after service of this subpœna, and answer the exigency of the original bill, under pain of attachment and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

[Seal S. C. D. of C.]

R. J. MEIGS, *Clerk, &c.*,
By R. J. MEIGS, JR., *Ass't Clerk.*

MEMORANDUM.—That the defendant herewith served is to enter her appearance in this suit in the clerk's office on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

67 *Marshal's Return.*

Served Etta T. Smith Feb. 24th, 1886.

ALBERT A. WILSON, *Marshal.*

68 *Decree Appointing James W. Greer Guardian ad Litem for Infant Def., Etta T. Smith. Filed Feb. 24th, '86. R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

WILLIAM TAYLOE SNYDER, Trustee, *vs.* ADELAIDE E. BAKER, ETTA T. SMITH, *et al.*, Defendants. } No. 9464, Equity.

Etta T. Smith, one of the infants, being here produced in open court, and it appearing to the court that she has been duly served with process and is over fourteen years of age, and that she nominates James W. Greer as her guardian *ad litem*—

It is by the court, this 24th day of February, A. D. 1886, ordered, adjudged, and decreed that James W. Greer be, and he is hereby, appointed guardian *ad litem* to make answer for said infant defendant, Etta T. Smith.

W. S. COX, *J.*

69 *Decree. Filed Apr.* 10, '86. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia, Holding a Special Term in Equity.

WILLIAM TAYLOE SNYDER, Trustee, Compl't,
vs.
ADELAIDE E. BAKER *et al.*, Def'ts. } No. 9464.

This cause came on to be heard at this term and was argued, and thereupon, upon consideration thereof, it is this tenth (10th) day of April, in the year of our Lord eighteen hundred and eighty-six, A. D. 1886, ordered, adjudged, and decreed as follows:

That the defendant, Virginia T. Lewis, administratrix with the will annexed of Virginia Tayloe, deceased, is entitled to receive and that the complainant pay to her or her solicitor the whole amount of the trust fund held by him (the complainant) which was bequeathed by the will of John Tayloe to and for his daughter, the said Virginia Tayloe, deceased, the said trust fund having passed under the will of the said Virginia Tayloe; and this cause is hereby referred to the auditor of this court to state the trustee's account.

W. S. COX, *J.*

70 *Report of Auditor with Vouchers & Exhibits. Filed Apr.* 14, '86. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

WILLIAM TAYLOE SNYDER, Trustee,
v.
ADELAIDE E. BAKER *et al.* } No. 9464. Equity Docket 24.

This cause is referred to the auditor to state the account of the complainant, trustee.

After due notice I proceeded to execute this order of reference and return the said account stated in the schedule herewith.

The complainant is trustee in cause No. 8228, in equity, in this court and as such trustee holds the fund which is the subject of controversy in the present cause. He has settled three accounts of his trust in the said cause and the present accounting is for the purpose of an ascertainment of the balance of the fund remaining in his possession and to be transferred and delivered to the defendant, Virginia Tayloe Lewis, administratrix *c. t. a.* of Virginia Tayloe, deceased.

In Schedule A I have stated the said trustee's account, charging him with the balance of the fund remaining in his possession at the date of the last settlement of his accounts in equity cause 8228,
71 together with the several sums of money received by him during the intervening period by way of income and revenue.

I have given the accountant credit for costs and expenses, includ-

ing the balance of costs in equity cause 8228 and the costs of the present proceeding; also the usual commissions upon the collections of income and an allowance of an extra fee to the complainant's solicitor for filing the bill and subsequent proceedings in the present cause.

As this trustee should be acquitted as well in cause 8228 as in the present, I have stated this account in duplicate for the purpose of having it filed and acted upon in both causes.

JAS. G. PAYNE, *Auditor.*

72 SCHEDULE A.

In duplicate.

Account of William Tayloe Snyder, Trustee.

DR.

1885.				
Jan'y 30.	To balance in his hands as per last report of auditor in cause No. 8228, in equity—cash			$37 31
	United States bonds, par value, $18,500.00:			
July 1.	To interest on U. S. bonds		185 00	
Oct. 1.	" ditto		140 00	
1886.				
Jan'y 1.	" ditto		140 00	
April 1.	" ditto		140 00	
				605 00
	Total U. S. bonds, 18,500.00, cash			$642 31

CR.

By costs in No. 8228		7 50	
" ditto in " 9464		51 20	
" commissions on $605.00		60 50	
" extra fee to solicitor for complainant in this cause		55 00	
" delivered to Virginia Tayloe Lewis, administratrix *d. b. n.* of Virginia Tayloe, deceased, U. S. bonds, par	4,500 00		
Auditor's fee		20 00	
Balance of cash		448 11	
" U. S. bonds, par	14,000 00		
	$18,500 00	$642 31	$642 31

73 To be delivered to Virginia Tayloe Lewis, administratrix, &c.—

Cash, 448.11.

U. S. bonds, par value 14,000.00.

J. G. PAYNE, *Auditor.*

74 In the Supreme Court of the District of Columbia.

SATURDAY, *April* 10, 1886—12 o'clock m.

SNYDER
v.
BAKER.

William Tayloe Snyder appears as trustee and makes the following statement:

Since the filing of the auditor's report March 16, 1885, he has received the following quarterly dividends payable on the United States consols of 1907 with which he was charged in said report, to wit:

July 1st, 1885	$185 00
October 1, 1885	140 00
January 1, 1886	140 00
April 1, 1886	140 00

He claims credit for the following payments:

April 2, 1885, by deposits for costs in this cause	$10 00
On or about July 13, 1885, transfer of United States consols (of 1905) in par value to Henry Wise Garnett, Esq., solicitor for Virginia Tayloe Lewis, one of the defendants in this cause	4,500 00
July 21, 1885, by amount paid Washington Law Reporter for publication of notice to absent defendants in above cause	5.00
In the said auditor's report he is charged with the balance of fund in cash	37 31
He is also charged with United States consols (1905) in par value	18,500 00
He has on hand United States consuls (1905) par value	14,500 00
And cash	627 31

75

76 *Order Confirming Auditor's Report. Filed Nov.* 1, 1886. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

WM. TAYLOE SNYDER, Trustee,
vs.
ADELAIDE E. BAKER *et al.*
Equity, No. 9464. Eq. Doc. 24.

Upon motion of Chas. D. Fowler, solicitor for the complainant, it is this first day of November, 1886, ordered that the auditor's report filed herein April 14th, 1886, be, and the same is hereby, finally ratified and confirmed.

CHARLES S. JAMES, *Justice.*

77 *Proceedings in General Term.*

MONDAY, *March* 28, 1887.

Session resumed pursuant to adjournment.

Present: Justices MacArthur, Hagner, and James.

WM. TAYLOE SNYDER, Trustee,
vs.
ADELAIDE E. BAKER *et al.* } 9464. Equity Doc. 24.

This cause coming on further to be considered upon the record and the argument thereon had, and the court, being of the opinion that the decree of special term of April 10, 1886, appealed from is correct, affirms the same; from which decision and decree the defendants Wellford pray and are allowed their appeal to the Supreme Court of the United States now here in open court taken.

78 *Appeal Bond. Filed April* 16, 1887.

In the Supreme Court of the District of Columbia, the — day of ——, 188–.

WILLIAM TAYLOE SNYDER
vs.
R. CARTER WELLFORD *et al.* } No. 9464, Equity.

Know all men by these presents that we, R. Carter Wellford, B. Randolph Wellford, Armistead L. Wellford, and C. E. Wellford, are bound unto the above-named William Tayloe Snyder in the sum of five hundred dollars ($500.00), to be paid to the said William Tayloe Snyder, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 11th day of April, 1887.

Whereas the above-named R. Carter Wellford, B. Randolph Wellford, and Armistead L. Wellford have prosecuted their appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named R. Carter Wellford, B. Randolph Wellford, and Armistead L. Wellford shall prosecute their said appeal to effect and answer all damages and costs if *he* shall fail to make good *his* plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

R. CARTER WELLFORD. [SEAL.]
R. RAND. WELLFORD. [SEAL.]
A. L. WELLFORD. [SEAL.]
C. E. WELLFORD. [SEAL.]

Sealed and delivered in presence of—
J. B. GENTRY,
M. A. POWERS,
As to C. E. Wellford.
EDW'D H. FITZHUGH,
LEWIS RAWLINGS,
As to A. L. Wellford & B. Rand. Wellford.
M. B. GARLAND,
L. D. WARNER,
As to R. Carter Wellford.

79 OFFICE OF THE U. S. ATTORNEY, E. D. VA.,
RICHMOND, VA., *April* 11, 1887.

I hereby certify that C. E. Wellford, the surety who has signed the within bond, is known to me as a resident of the city of Richmond, Virginia, and a citizen of the United States, and is amply sufficient security for the amount thereof, and that the bond is good.

JAMES LYONS,
Ass't U. S. Att'y, E. D. Va.

Approved April 16, 1887.

A. B. HAGNER,
Asso. Justice, &c.

80 AUTHENTICATION OF RECORD.

Clerk's Certificate.

CLERK'S OFFICE,
SUPREME COURT OF THE DISTRICT OF COLUMBIA.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 31 day of August, 1887.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
Assistant Clerk.

Justice's Certificate.

I, E. F. Bingham, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 31 day of August, 1887.

E. F. BINGHAM, [SEAL.]
Chief Justice.

Clerk's Certificate to Justice's Official Character.

I, R. J. Meigs, clerk of said court, hereby certify that E. F. Bingham, whose genuine signature is subscribed to the foregoing certificate, was at the time of signing and attesting the same chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 31 day of August, 1887.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
Assistant Clerk.

[Endorsed:] Authentication of record.

Endorsed on cover: District of Columbia supreme court. No. 401. R. Carter Wellford, B. Randolph Wellford, and Armistead L. Wellford, appellants, *vs.* William Tayloe Snyder, trustee. Filed September 16, 1887.

Office Supreme Court U. S.
FILED.
NOV 24 1890
JAMES H. McKENNEY
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1890.

R. CARTER WELLFORD, *et al.*,
vs.
WM. TAYLOE SYNDER, *Trustee.*
No. 105.

Appellants' Brief.

LEIGH ROBINSON,

For R. Carter Wellford,
B. R. Wellford,
A. N. Wellfrod.

R. O. POLKINHORN, PRINTER,

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1890.

R. CARTER WELLFORD, *et al.*,

vs.

WM. TAYLOE SYNDER, *Trustee.*

No. 105.

Appellants' Brief.

This litigation arises on a Bill of Interpleader, filed by the trustee, Snyder, for the construction of the will of John Tayloe. The decision of the court below was adverse to the claim of the appellants, who are descendants of one of the testator's daughters.

After appropriate provision for his wife, the testator provides for his several sons. It is obvious, and it is in effect admitted, that the provision made for each of these sons was greatly in excess of the interest bestowed upon the daughters. In the case of two of the sons, the testator's gift is subject to an annuity of $400 per annum from each, settled upon the testator's daughter-in-law Maria Tayloe. The testator next gives to his grandson, John Tayloe, Jr., and his heirs forever, two plantations in Mary-

land: "*provided, however, that if my said grandson shall die unmarried, under age, and without issue, that then, in that case, the property hereby left him is to pass and revert to my own right heirs.*" (Rec., p. 7.) The estate of the grandson is likewise chargeable with $400.00, another part of the said annuity to be paid to Maria Tayloe, his mother. The provision for the grandson and the daughter-in-law is a key-note to the whole will. The testator, it is seen, considered marrying and having children a ground not for restricting, but for enlarging an estate; and, secondly, that for a woman, unburdened by offspring requiring her support, $1,200.00 per annum, for the term of her natural life, was an adequate provision.

The testator then gives and devises to *all his sons*, in joint tenancy, his estates, plantations, iron works, &c., in Bottetourt County Virginia; and, again, "*to all my sons*, all my tradesmen and mechanics of every description, &c.

Here the provision for the male descendants pauses, and the testator addresses his mind to the female line. First, he gives to the children of his niece, Jane Beverly, all his Kentucky lands, to be equally divided amongst them, but "in case any of them should die *without issue living* at the time of his or her death, then the share of such child so dying shall go to the surviving children, and to the issue of such of them as may be dead. And in case of the death of all the said children, *without issue living at the time of their deaths*, then the said Kentucky lands to revert to my own right heirs." (Rec., p. 8.) Here, again, we see the manifest determination of the testator, that no part of his estate should be bestowed absolutely on any of his descendants, whether

direct or collateral, unless he or she left offspring to succeed to it.

The testator, then, referring to the fact that he had settled $10,000 upon his daughter, Mrs. Key, at the time of her marriage, gives her $10,000 more, "to be settled upon her, to her own separate use, during her life, and after her death, upon her children and their descendants." (Rec., p. 8.) This, in effect, gave to Mrs. Key what had been previously given to Mrs. Maria Tayloe, viz: $1,200 per annum for the term of her natural life, coupled with a remainder to the children of Mrs. Key. Then follows the paragraph which is the subject of this controversy.

> "I give and bequeath to my daughters Catherine, Elizabeth M., Virginia and Ann O. Tayloe twenty thousand dollars apiece, to be vested in United States Bank stock or in Government securities, which stock or securities, I do hereby direct that my executors, hereinafter named, shall hold in trust for my said daughters respectively, and shall apply the dividends, interest, or profits of the said stock or securities to the use and benefit of my said daughters, Catherine, Elizabeth M., Virginia and Ann O. Tayloe severally, and respectively, as the said dividends, interest and profits shall accrue, and from and after the intermarriage of any of them, then, my said executors shall hold the said bank stock or other securities belonging to said daughter so marrying, in trust for the following purposes, that is to say, in trust for the maintenance of her and her husband during their joint lives, then in trust for the survivor of the said husband and wife during his or her life, and after the death of such survivor then in trust for such issue as she may leave at the time of her death, and in case she may die without

leaving such issue, then in trust for her surviving sisters (my other daughters), and the issue of any deceased sister, such issue taking such share as the deceased sister whom they represent would have taken had she been alive to take, and it is my intention that the said stock or securities, as also the dividends, interest, or profits thereof shall be utterly free from the power or control of the husbands of my said daughters." (Id.)

The testator then constitutes certain real and personal estate to be a fund set apart for the payment of debts and legacies, empowering his executors to sell and dispose of the real estate so set apart, and apply the money arising therefrom to the purposes intended; and the better to secure the payment of his "*daughter's fortunes*," he directs that if the funds appropriated for the payment of debts and legacies be insufficient, his estate generally be charged to make up the deficiency to *his said daughters.* (Id., p. 9.) He then directs the plate, in his Washington house, after his wife's death, to be equally divided "*among all my sons;*" his stock of liquors and spirits on hand at his death to be equally divided "*among all my sons;*" and should there be any surplus of the fund set apart for the payment of debts and legacies, the same to be equally divided "*among his sons*, other than the son to whom Mount Airy is devised." Finally, in a codicil the testator mentions an advance of $5,000, to his daughter Catherine, upon her marriage with James Baker, the remaining interest bequeathed to her to be held in trust "to her separate use and to her representatives, *as designated and limited in that clause in which I have made provision for my daughters.*" (Id., p. 11.)

death, a question now arises what was the provision *issue.* ein made for his daughters. This is the testa- *other's* distinct provision for them. Every other residuum goes to the sons: the only possible increment to any daughter's portion must be derived from the failure of some other daughter's line.

It does not have to be argued that if a testator gives an absolute interest in lands or personalty and afterwards shows that he means the donee to take a less estate, the prior gift will be so restricted. Sheet's Estate, 52 Pa. St., 257; 3 Greenleaf's Cruise, 343; *as where the devisees or legatees are deprived of the right of alienation, or the property is directed to remain free for their children or heirs, and they are to have the use or income only for life.* Urich's Appeal, 86 Pa. St., 386; *Terry* vs. *Wiggins*, 47 N. Y., 512; *Bell* vs. *Warn*, 4 Hun., 406; *Collier* vs. *Grimsey*, 36 Ohio St., 22; *Baxter* vs. *Bowzer*, 19 Id., 490; *Smith* vs. *Bell*, 6 Pet., 76. "*The limitation in remainder shows that in the opinion of the testator the previous words had only given an estate for life.*" Id. "If expressions be used which show with sufficient certainty that a qualified gift was intended, a court of equity will look to the clear intention of the testator, and raise a constructive trust, where none has been declared." *Lucas* vs. *Lockhart*, 10 Sm. & M., 456. Thus, where property was bequeathed in trust for the testator's daughter, "and her heirs born and to be born." Held, that the bequest vested in the daughter a life estate in the property with remainder to her children, whensoever born. *Woodruff* vs. *Woodruff*, 32 Ga., 361. "The creation of a trust, the direction to pay over income, and the gift of the remainder after the death of the *cestui que trust* con-

trol the general words of gift and are incons[illegible]viv-sue ch with absolute bequests." *Barnes* vs. *Richlan[illegible]* Gray, 514; *Butler* vs. *Gray*, 5 Ch. App., 26.

In the case of *Noe* vs. *Miller*, the court said:

> "Here, in the first instance, the gift is made *to the daughter absolutely, and to the exclusion of everybody else;* but the testator immediately adds, that the subject of the gift shall be hers and her children's forever."

Held that the daughter took a life estate with remainder to her children. 31 N. J., Eq. 235; *S. P. Dean* vs. *Hurt*, 62 Ala., 309; *Pillow* vs. *Wade*, 31 Ark., 683.

Hence, it is clear, that the initial words of the paragraph in controversy decide nothing, but that the terms of the trust and power reposed in the executors determine everything.

It is submitted, that the intent of the testator, and the right construction of this paragraph is the same, as if after the words, "severally and respectively as the said dividends, interest and profits shall accrue," the testator had proceeded as follows: "And from and after the intermarriage of my said daughter Catharine, then my said executors shall hold the said bank stock or other securities belonging to said daughter so marrying, in trust for the following purposes, that is to say, in trust for the maintenance of her and her husband during their joint lives, then in trust for the survivor of the said husband and wife during his or her life, and after the death of such survivor, then in trust for such issue as she may leave living, at the time of her

death, *and in case she may die without leaving such issue, then in trust for her surviving sisters, (my other daughters);* and from and after the intermarriage of my said daughter Elizabeth M., then my said executors shall hold the said bank stock or other securities belonging to said daughter so marrying, in trust for the following purposes, that is to say, in trust for the maintenance of her and her husband during their joint lives, then in trust for the survivor of the said husband and wife during his or her life, and after the death of such survivor, then in trust for such issue as she may leave at the time of her death, *and in case she may die without leaving such issue, then in trust for her surviving sisters, (my other daughters);* and from and after the marriage of my said daughter, Virginia, then my said executors shall hold the said bank stock or other securities belonging to said daughter, so marrying, in trust for the following purposes, that is to say, in trust for the maintenance of her and her husband during their joint lives, then in trust for the survivor of such husband and wife during his or her life, and after the death of such survivor, then in trust for such issue as she may leave living at the time of her death, *and in case she may die without leaving such issue, then in trust for her surviving sisters, (my other daughters)*, &c."

It is submitted that the testator sought to accomplish the effect of four different repetitions of the same words, by making the identical terms applicable to "*any of them*;" that these words, "*any of them*," constitute the antecedent, which is in his mind and contemplation to the end of the paragraph, and travels with him and is referred to by him in all that

follows—being the provision and reversion intended for the benefit of the testator's daughters, and for them only.

At the time this paragraph was written, each of these daughters was unmarried, and the paragraph was written in evident expectation that none of them would remain so. The testator meant to say, I give these legacies to my daughters and their husbands during their lives, and to their children after them, and where there are no children to take, the share which would go to children, if there were any, to the surviving sisters. If one of these unmarried daughters had died intestate immediately after the death of the testator, would the testator's intent have been carried out by distributing her legacy to all the next of kin of the testator, male as well as female?

It so happened that the testator's daughter Virginia Taylor never married, and, of course, therefore, when she died, left no children. It is contended, and by the court below decided, that the words "in case she may die without leaving such issue," &c., gramatically refer only to a "daughter so marrying." The argument, rigidly carried out, would amount to saying that the testator only meant to qualify the estate in case a *married daughter* had children. In the decision of this question in the court below, the following language is employed:

> "*If the entire clause had been four times expressed in the will, each repetition referring to only one daughter separately, how could the added words declaring what should happen from and after the marriage of Virginia, by possibility apply if Virginia should not marry at all.*" *Snyder* vs. *Baker*, 5 Mackey, 458.

It is agreed that the repetition does not make any difference in the true meaning of the clause; but it is respectfully submitted that it discloses the impossibility of the construction arrived at by the court below.

There can be discovered in this will no encouragement to the celibate or monastic life. On the contrary, so far as the testator's system of rewards and and punishments can accomplish it, it is marriage which is rewarded. Property is limited not because the beneficiaries of the testator's bounty do leave descendants, but because they do not. The testator is not making a distinction between married and unmarried daughters, but between the male and female line. Suppose, in a different case, but governed by the same phraseology, an unmarried daughter had left children, would she, because "not so marrying," take an absolute estate which she could dispose of as she pleased?

Again, did the testator seriously mean to say, a widowed daughter without children shall have only a life estate in the income, with no power to dispose of anything at her death, while a daughter who has never married at all, may bestow the corpus of the estate where she pleases, and if she make no disposition whatever it shall go, not to "*her surviving sisters, my other daughters*," but to her next of kin generally, brothers as well as sisters. Why should the testator make this remarkable discrimination, that the reversion of an unmarried daughter's interest may be shared by her brothers, although the reversion of a married or widowed daughter's interest shall in no case go to them, until the female line is extinct?

It is not unusual for the facts of a case to show a latent inaccuracy and wrong relation to antecedent, (*Kelly* v. *Bronson*, 26 Minn., 361.)

If it be necessary to effectuate the general intention of the testator clearly revealed in the body of the will, the grammatical construction of a particular clause will be disregarded. *O'Neal* v. *Boozer*, 4 Rich. Eq., 22; *Keith* v. *Perry*, 1 Dessau, 351; *Roberts* v. *Watson*, 4 Jones, L., 319.

The true meaning of words used in a will is to be arrived at by considering them not only in their relation to the clause immediately in question, but to the whole will. *Boston Safe Deposit Co.* v. *Coffin* (Mass.) 8 L. R. A., 740; 25 N. E., 30.

The mere grammatical or ordinary sense of words used in a will is not to be adhered to if it would be repugnant to or inconsistent with the remainder of the instrument. *Id.*

In construing a will grammatical accuracy may be disregarded; and it should be read with a view to the situation and circumstances of the testator. *Rose* v. *McHose*, 26 Mo., 590.

> "It is common to gather some aid, in giving a difinite construction to a particular legacy from those legacies which immediately precede and follow it." (2 Redfield on Wills, 380.) The paragraphs in which the testator makes provision for his daughters are two; the paragraph in which he makes provision for his married daughter, Mrs. Key, and the words immediately following in which he makes provision for his unmarried daughters. Whether these five children were married or single, they were equally the daughters of the testator, and the provision which he made for his "daughters"

> can only be discovered, from the provision which is made for all of them. Is there then any reason to believe that, in the paragraph in controversy, the testator intended to give his unmarried daughters a greater estate than he had given Mrs. Key, upon condition that they should remain unmarried? Is it probable that in contradiction of the whole scheme and policy of the rest of the will, the testator, in this one paragraph, intended to put matrimony under a ban, and to put a premium upon celibacy? that he meant to say, "I give you $20,000, absolutely, if you are a spinster without children, but for life only, if you are a widow without chidren."

Why should he in this way seek to visit one whom life had so grievously forsaken?

Each of these daughters being unmarried at the date of this writing, the testator makes his disposition, not in reprobation, but in contemplation of the marriage of all of them. When he directs that "*from and after the intermarriage of any of them*," the trustees shall hold in trust for the maintenance of her and her husband during their joint lives, he means in trust for the maintenance of *any of them* and her husband. When he says, "in trust for such issue as *she* may leave at the time of her death," he means in trust for such issue as *any of them* may leave at the time of death. When he says, "in case *she* shall die without leaving such issue, then in trust for her surviving sisters," he means in case *any of them* shall die without leaving such issue. The ground of dissent from this view is due to the fact that the testator took the decent precaution to contemplate that the marriage of his daughters would antedate the birth of issue from them. Surely it

was not the intent of the testator to say a married daughter with children will take the bequest for life, but an unmarried daughter with children will take it absolutely.

When the testator says, "It is my intention that the said stock or securities shall be utterly free from the power or control of the husbands of my said daughters." Who were these husbands of the future? Clearly the husbands of "*any of them.*"

The testator's intention plainly was to secure to each of his daughters, whether married or single, the income arising from a stated sum, and from and after her death, and her husband's, the fund itself to her offspring, and in default of such offspring, to her surviving sisters.

The paragraph immediately succeeding the bequest to Mrs. Key and the four unmarried daughters, begins (Rec., p. 12), "and the better to secure the payment of these, *my daughters' fortunes*, I do direct, &c.," *i. e.*, this $100,000 is set apart to be "*my daughters' fortunes*," to whom alone under these provisions it shall go as long as one of them is left to take. The testator treats the two paragraphs, the one providing for Mrs. Key, and the other providing for the unmarried daughters, as being identical provisions, the provisions "*for these my daughters' fortunes.*"

He does this once more, when a daughter subsequently marries—the testator's daughter Catherine. On the occasion of this marriage, the husband receives $5,000 and the remaining $15,000 is settled on the daughter "*to her separate use and to her representatives, as designated and limited in that clause in which I have made provision for my daughters.*" (Rec., p. 11.)

The clause in which this provision is made is the clause in controversy. The testator, therefore, says by this codicil, "the clause in which I have made provision for my unmarried daughters is the measure of the provision for this married daughter." The limitations and the representatives to take are the same in both cases. Three other daughters are then single, and the testator says:

> "The provision I have made for the single ones is identical with that which I make for this married one. The way to find out the trusts upon which the property is held for this married sister is to read the trusts declared for the single sisters."

Conversely, to apply the trusts to the case of a single sister, we have only to know what they are in the case of a married sister.

By thus identifying the provision made for Mrs. Baker with the provision already made for Mrs. Key and her unmarried sisters, the testator shows conclusively that he himself did not intend any difference in the limitation over after the death of a daughter whether she was married or single.

This mode of applying a standard and exponent of intention was employed in North Carolina in the case of *Bridges* vs. *Wilkins*, which was a bequest to six sisters, one of whom was married, "not to go to any but my sisters directly and their progeny, and not to their husbands." This language, said the Court, "*is applied equally to all the sisters, and the court cannot make any distinction between them.*" (3 Jones Equity, 345.)

In the case at bar, it is clear the testator did not intend simply to create a separate estate for the daughter, free from the control of the husband, for he expressly gives the use of the income to the husbands during their lives. Indeed the solitary instance in which he gives the principal of any part of this fund, is where by the codicil above referred to he bestows $5,000.00 on James Baker, the husband of his daughter Catharine. The object in giving it to trustees is to protect the remainders.

In the case at bar, until the death of each daughter, the corpus or principal is vested in trustees for the ultimate purpose, viz: the distribution among the other sisters, upon the death of that one leaving no children. When property is conveyed to trustees merely to create the separate use of a married woman, upon the death of the husband, the use would be immediately executed in the widow. *Roberts* vs. *Mosely*, 51 Mo., 282.

The corpus of the estate is fully and distinctly vested in the trustees, and put under their control. The bequests to the daughters, irrespective of coverture, are only of the annual income, as it accrues. At no period of her life, did Virginia Tayloe have the right to assign or dispose of anything more than one year's income, how did she acquire any greater right after she was dead?

II.

In the case of Mrs. Key the testator settled $20,000 on her for life, with the remainder to her children. In the case of the others he directs, in effect, that the dividends, interest, or profits of $20,000 shall be applied to the use of each up to and until her marriage,

—an event which it is plain the testator expected to precede death. Further, in providing that only the dividends, interest, or profits, should be paid to the unmarried daughters during life, the testator did, in legal implication and effect, limit the estate, just as he had done by express words in prior instances. An estate for life, remainder to children, and income of fund-principal to children, are identical equations.

A gift to a trustee of personal property, without words of limitation, vests in him the whole estate subject to the trust. (*Hanson* vs. *Worthington*, 12 Md., 418.

Where it is the manifest intent to sever the product from the source a bequest of the income does not and cannot carry an absolute estate in the principal. (*Bently* vs. *Hauffman*, 86 Pa., st., 99.)

A married woman may charge in equity a trust estate secured to her, to the extent of her interest in it, but no further; and hence, *if only the proceeds are settled to her use, she cannot charge or encumber the corpus of the estate.* (*Prewit* vs. *Land*, 36 Miss., 495.)

A bequest to trustees of a fund, with directions to pay over the income as it accrues to the *cestui que trust*, and upon the trust, equally distinct to retain the principal during the life, and until after the death of the beneficiary, to await and satisfy other trusts which are then expected to arise, does not give to the beneficiary the possession or disposal of the principal.

In the case at bar the legatee could not touch the principal at any time during her life. She was entited to the annual produce only; of this and this only could she dispose of as she pleased.

"The rule which gives an absolute interest in the fund, where there is a general gift of the income is not a very strong rule." *Blann* vs. *Bell*, 5 De. G. and Sm., 663.

"What is given to the two consists of the dividends merely. What did the testator give to the two to take equally between them? *Clearly an interest in the dividends only* during their joint lives. The contention is that the survivor is to take the capital. Why? If the two take *only the dividends* during their joint lives, that must be because the word "*dividends*" does not mean *corpus*, but interest as distinguished from *corpus*." S. C. DeG. McN., and G. 781. S. P. *Innes* vs. *Mitchell*, 6 Ves., 466; *Wetherell* vs. *Wetherell*, 4 Gif., 59.

The cases which hold that the gift of the income of a fund carries the fund too, mean that the donee is the absolute owner of the income. The whole profit of a thing is the thing itself.

But when a testator says, "It is my intention that the stock and securities, as also the dividends, interest, or profits thereof, shall be utterly free from the power or control of the husbands of my daughters" (Rec., p. 6), does he not show that in his own mind, he has distinctly separated the "interest" from the "securities," the "*dividends*" from the "*corpus?*"

The principle is plain that, where the interest or dividends alone are the subject of bequest until a particular time, and the principal is not directed to be paid or transferred to the legatee until the end of that period, it is the intention of the testator to make the gifts of the interest and the capital separate and distinct. It is equally well established that where

the interest only or income is given to a person for life, or some other period, and at the decease of the first taker, or the end of the period, the capital is bequeathed to another, and where it appears from the context of the will that no interest in the capital was intended to pass till the determination of the life estate, or other particular period, the gift of the income and the gift of the capital are considered as distinct gifts. (Williams on Ex'ors, p. 1057; Fearne, 554, (note;) Roper on Legacies, 421; *Hamilton* vs. *Floyd*, 2 Ves., Jr., 415.)

In the case at bar the only absolute interest which the legatee had during her life was in the income. The only time and condition at and under which the principal could vest in anybody was at the time of her death—*i. e.*, the preliminary to the taking of the legatee is the extinction of the legatee. Now, where the legatee of the principal dies before it can vest, the legacy is not transmissible to the executors or administrators. (Williams, p. 1067; 1 Roper, 506.) How, then, in the present case, can a legacy be transmitted to the personal representatives of one who ceased to exist before the legacy could begin?

A corpse can neither acquire nor transmit.

Have we here a bequest of income so unlimited as to be tantamount to a bequest of the principal? Is a contrary intention absent? Is there not a discrimination between the income and the principal? Is not the corpus or principal vested in trustees until the death of each daughter for the ultimate purpose of the will? Does it not appear that the produce or interest of the fund only was intended for the legatee?

The testator's intention plainly was to secure to each of his daughters the income arising from a stated sum as long as she lived, and from and after her death (or her husband's) the fund itself to her offspring, and in default of such offspring to her surviving sisters.

The placing of property, whether real or personal, in the hands of a trustee, upon a distinct trust to pay over the income to the beneficiary, but with equal clearness not to pay over the principal, gives to the beneficiary a vested equitable estate for life. *Brandon* vs. *Robinson*, 18 V., Jr., 429; *Dick* vs. *Pritchard*, 1 Dev. & Bat., Eq. 480. In *Havens* vs. *Healy*, 15 Barb., 301, it said: "There is no question here of the suspension of the ownership of the fund for any particular period by way of limitation or condition, as it is perfectly obvious that the design of the person creating the trust was that the fund itself should all be paid to the *cestue que trust. It has no analogy to a case where a fund is created and the income of the fund only is to be paid by the trustee to the cestue que trust, the ownership of the fund in the meantime being suspended. In such case the beneficial interest of the cestue que trust is in the income and not in the fund, and he has no power to alienate or charge the fund.*" *Id.*

An estate was left "in trust to and for the use and benefit of my said daughters and their families respectively, and it is my will that the titles thereof shall be held by my sons in trust as aforesaid, and the *income* of the respective portions shall be received by my said sons, as trustees as aforesaid, and paid over to my said daughters for their sole and separate use, to each daughter during life, and then to her

husband in case a husband shall survive, and after the decease of my said daughters and their husbands the said portion to the right heirs of my daughters respectively." Held, that the daughters took a life estate in both realty and personalty, *and that consequently nothing passed by the will of one of them.* (*Bacon's Appeal*, 57 Pa. St., 504–514; S. P. *Akers* v. *Akers*, 23 N. J. Eq., 31.)

In the case under discussion it may be said, as in the case of *Leggett* vs. *Perkins*, 2 N. Y., 316: "No person can read the will without being satisfied that the testator intended that the part of his estate which was to be for the benefit of his daughters should, during their lives, be under the control and management of his executors and trustees."

It is plain that the intent of the testator was not limited to the creation of a separate estate for the daughters, free from the control of their husbands, for he expressly gives the husbands as much as he gives the daughters, and in the case of Mr. Baker, advances him $5,000 absolutely. The great object in giving to trustees is to protect the remainders.

The bequest in controversy amounts to no more than a bequest to an unmarried woman and her children, in which case she takes a life estate, with remainder to her children, if any. *Dean* vs. *Hurt*, 62 Ala., 308; *Fales* vs. *Currier*, 55 N. H., 192; Perry on Trusts, § 363; Lewin, p. 105. "In a conveyance to an unmarried woman and her children, 'children' is a word of purchase, and she takes a life estate with a remainder to her children." *Fales* vs. *Currier*, 55 N. H., 392. "Testator directed that the legacies given by his will to females, married or single, should be for their own benefit and their children,

and should never be subject to the control of their respective husbands. Held, that the females took for their lives, for their separate use, with remainder to their children." *Bain* vs. *Lescher*, 11 Sim., 397; *Newman* vs. *Nightingale*, 1 Cox, 341; *Hollister* vs. *Shaw*, 46 Conn., 248; *Hatfield* vs. *Sohier*, 114 Mass., 48.

A testator gave a portion of his estate to trustees to pay over the *income* to his daughter M. during her life, and on her death to convey the same to her children, if she left any, and in default of children to such person or persons as M. by her last will should appoint, and, in default of appointment to her heirs at law, M. left a will not referring to the trust fund, not to the power of appointment, but speaking of the property disposed of as "*my estate.*" Held, that she had not executed the power of appointment. *Hollister* vs. *Shaw*, 46 Conn., 248.

III.

The construction of this language by the court below is, that it gives an absolute interest to each daughter, in the first instance, subject to be defeated by the event of her marriage, but which remained absolute until that event. *Snyder* v. *Baker*, 5 Mackey, 459.

This conclusion is founded on the adjudication in *Gulick* v. *Gulick*, 27 N. J. Eq., 498.

In the case appealed to for authority, the language of the bequest is:

> "I give and bequeath to my daughter Abby Maria, the sum of $10,000, to be placed out at interest on bonds and mortgages, so soon as my

> estate can be collected without sacrifice; the bonds and mortgages to be taken in the names of my executors, or the survivor of them, for her sole and separate use, and in nowise liable for the debts, or subject to the control of any man she may marry; should she marry and have a child or children, then, after her death, I give the said $10,000 to such child or children."

Abby Maria did not marry. The court held that this was an absolute gift followed by a gift over on the death of the first taker, and not defeated, unless the gift over took effect. This having been adjudicated to be the law of the legacy, it followed, logically, that if the first taker had married and died childless, her husband would have taken the gift absolutely as her administrator." (Id.)

Plainly, in the case at bar, if Virginia Tayloe had married and died childless, her husband could not have taken as administrator.

It is very singular if the provisions of the paragraph in controversy were only intended to protect the property from husbands, that similar provisions were wholly omitted from the paragraphs, which did make provision for daughters who had husbands, unless, indeed, such provisions are incorporated by the reference which identifies the provision for the married daughter as being the same with that for the single one.

In *Gulick* vs. *Gulick*, the court says: "The rule therefore governs that, where an absolute gift is made in the first instance, followed by a limitation over *on the death of the first taker*, the absolute gift is not defeated, unless the gift over takes effect." (Id. 500.) It is part and parcel of this rule, which seems to have

been overlooked by the court below, that a gift over of the legacy or share of a legatee dying under certain circumstances, only takes effect if the death happens in the testator's lifetime. The death must happen, and the gift over take effect, when the will goes into effect. *Varley* vs. *Winn*, 2 K. and J., 700; *McKinnon* vs. *Peach*, 2 Keen, 555. Hence "a bequest to any person, and in case of his death to another, is an absolute gift to the first legatee, if he survive the testator." *Home* vs. *Pillans*, 2 M. and K.

A gift to "A or his issue" is equivalent to a gift to A and "in case of his death" to his issue, and takes effect in the same manner. *Salisbury* vs. *Petty*, 3 Hare, 86.

The rule applies to devises of real estate where the prior devise passes the fee simple. *Edwards* vs. *Edwards*, 15 Beavan, 357.

A devise to A and his heirs, and in case of his death to B, is an absolute devise to A, if he survives the testator. *Whitney* vs. *Whitney*, 45 N. H., 311; *Briggs* vs. *Shaw*, 9 Allen, 516; *Hill* vs. *Hill*, 5 G. and J., 87.

The inconsistency of treating, as a contingency, the event of all others, the most certain, is not the only consideration which has swayed the courts in seeking for qualifications to restrict the generality of such clauses. *The leaning in favor of vesting and against a construction which would postpone the absolute enjoyment, and indeed keep in suspense the nature of the interest bestowed, has here, as in other branches of the law, operated powerfully in the same direction.* *Home* vs. *Pillans*, 2 M. and K., 21.

Where a gift of the absolute interest in property to one person is followed by the gift of it to another,

in a particular event, the disposition of the courts is to put such a construction on the gift over as to interfere as little as possible with the prior gift.

The construction is favored which makes an estate vest absolutely at the earliest possible moment:

Thus, where a testator bequeathed a sum of stock to each of his nephews and nieces, or to their respective child or children; should any die without child, his share to revert to the residuary legatee; it was held that the legacies vested absolutely in the nephews and nieces who survived the testator, and that the child or children of the nephews or nieces took only as substitutes for their parent or parents dying in the testator's lifetime. (*Montague* v. *Nucella*, 1 Russ., 165.)

But in the case at bar such a construction would defeat the executory bequests, in the case of all the unmarried daughters, at the death of the testator who afterwards married.

If, however, the bequest be in remainder *after a life interest*, the gift over is not restricted to death in the testator's lifetime, but operates during the continuance of the life interest.

Henry v. *McLaughlin*, 1 Price, 264;
Galland v. *Leonard*, 1 Swanston, 163;
Da Costa v. *Heir*, 3 Russ., 360.

The language, "should she marry and have a child or children, then after her death, I give the said $10,000 to such child or children," might well be considered as equivalent to the expression, "should my said daughter die leaving issue, such issue to take her deceased parent's share." Where the tes-

tator's language was one-seventh of his property to A, his heirs, executors, and administrators, followed by devises and bequests, in the very same words to each of his other six children, "and in case any of my sons and daughters die and leaving issue, that they take their deceased parent's share, share and share alike," Lord Campbell, *C. J.*, said: "If all the children are to take, it must be by the second way suggested, viz., by cutting down the estate of their parent to an estate for life. * * We must see whether we are compelled to reject and so justified in rejecting altogether the words, 'heirs, executors, and administrators' in this will, or whether we can give effect to those words and also to the words in the last clause. *Now the only mode of giving effect to them all is by treating the words in the last clause, as words of substitution in case of a lapse, and referring the time of the death of the parent then contemplated to the lifetime of the testator.*" *Gee* vs. *Mayor*, 79 E. C. L., 744; *S. P. Clayton* vs. *Lowe*, 5 Id., 347.

By a parity of reasoning, where the period referred to is not the death of the testator, the estate will be cut down.

A testatrix bequeathed a legacy to A, his executors, &c., "but in case he should die leaving lawful issue," she bequeathd it to A's children. A survived the testatrix. Held, that A took a life interest only.

The Master of the Rolls:

> "The consols, &c., are given to J.; his executors, &c., but in case he shall die, leaving lawful issue, then in trust for his children. *I should be striking out the latter words from the will if I*

were to hold that he took an absolute interest in them. I considered *the case in Edwards* vs. *Edwards, and came to the conclusion that the period referred to was not the death of the testator, but had reference to the death of the first taker, which cuts down the absolute estate to an estate for life.*"
Johnstone vs. *Antrobus*, 21 Beav., 558.

Where there is no previous life estate the contingent gift over has reference to the death of the testator. Where there is such previous life estate the contingent gift over has reference to the death of the first taker.
Edwards vs. *Edwards*, 15 Beav., 364.

"The principle which regulates such cases is to be found in the often expressed desire of the court to avoid a construction so inconvenient *as one which must suspend the absolute vesting of the subject of the gift during the whole life of the legatee or devisee.*" Id., 365.

"The words of contingency are read as applying exclusively to the happening of the event in the testator's lifetime, in order *to avoid repugnancy*, inasmuch as the alternative limitations, *if not qualified and restricted* in construction, would reduce the prior devise in fee to an estate for life." 3 Jarman on Wills, (R. & T. Ed.), 643; *S. P. Barrell* v. *Barrell*, 38 N. J. Eq., 60.

So the language in *Gulick* v. *Gulick*,—"Should she marry and have a child or children, then, *after her death*, I give the said $10,000 to such child or children," may have been construed—"*after her death*" in the lifetime of the testator, and must have been so construed to have vested in her an absolute estate upon the testator's death.

In the case before the court ; if Virginia Tayloe and her unmarried sisters did not, by the terms of the will, have vested in them, at the time of the testator's death, they did not afterwards acquire such absolute ownership.

It is not the enjoyment of the principal, but the principal itself, which is postponed. *The direction to pay is the gift, and this gift is exclusively to surviving children or surviving sisters.*

Bequest of residue to testator's daughters A and B in equal proportions; and in case of the death of either the whole to the survivor of them; and in the event of their marrying and having children, then to the child or children of them, or the survivor of them, if they should attain the age of twenty-one years; but if not, then among the children of C A and B who survived the testator; and A, who died without having been married, bequeathed the whole of her property to B: Held, that the bequest did not become absolutely vested in A and B on the death of the testator, but continued subject to the executory bequest over in favor of C. *Child* vs. *Giblett*, 10 Eng. Ch., 70: "*The testator cannot possibly have intended that the children of Paul Giblett should take in the event of a marriage of his daughters and their death without children in his lifetime, and that they should not take in the event of a marriage of his daughters, and their dying without issue after his decease. That would not be a rational distinction. I am of opinion, therefore, that the general rule is here qualified by the subsequent words used by the testator.*" Id., 74, Sir John Leach, M. R.

This case conducts us logically to the next conclusive reason for reversing the construction and decree from which this appeal is taken.

IV.

The various bequests over, directed by the testator, are valid as executory bequests, and are themselves inconsistent with an absolute estate in the first taker. 4 Kent, 270; *Hoxsey* vs. *Hoxsey*, 37 N. J. Eq. 21;

Personal property may be limited over after *a life estate, but not after a gift of the absolute property.* 2 Kent, 352; *Cuthbert* vs. *Purrier*, 4 Cond. Eng. Ch. 193; *Jackson* vs. *Bull*, 10 Johnson 20; *Jackson* vs. *Robbins*, 16 id. 537; *Ide* vs. *Ide*, 5 Mass., 504. "The plaintiff's counsel in *Jackson* vs. *Robbins* attempted to establish a distinction between real and personal property. *But they akmitted that the doctrine, as above stated, was well established as to personal property.*" *Busbank* vs. *Whitney*, 24 Pick., 155.

"If the remainder over by way of executory devise be good, it necessarily results that the first taker has nothing more than a life interest." *Bean* vs. *Myers*, 1 Coldw., 228; *Jones* vs. *Bacon*, 68 Me., 24.

> "A conveyance of land to *an unmarried woman* to have and to hold unto her and the heirs of her body *forever*, vests in her *an estate for life only*, and creates a contingent remainder in favor of the heirs of her body who, when born, will take the absolute fee."
>
> *Frazer* vs. *Supervisors*, &c., 74 Ill., 282.

Where the first taker of an interest in lands has an absolute estate therein, a limitation over by way of executory devise is void.

Hoxsy vs. *Hoxsy*, 37 N. J. Eq., 21.

"A party cannot give an unlimited dominion of his property over, and at the same time a limited right in it to another; in other words, a remainder cannot be engrafted on a fee."

Reinders vs. *Koppelman*, 68 Mo., 62;
S. P. Wead vs. *Gray*, 78 Id., 65.

A gift, with uncontrolled power to devise, carries the fee.

The limitation over after the fee is void.

Harker's Appeal, 60 Pa. St., 141;
Fearne, p. 401.

In the case at bar, the legatee is only a usufructuary owner, entitled to the annual produce, but without power over the capital. The testator did not leave it to these daughters to digest a scheme for the disposition of their estates, but deliberately (returning to it repeatedly) digested his own scheme of disposition. The scheme, embracing alike his children and their issue, was perfected to the minutest detail, and left by the testator to have effect as his will. The construction contended for would defeat the scheme of disposition by a single provision clearly repugnant to the whole tenor of the will.

This disposition of the subject-matter of the will, evidently intended to be applicable to every possible event, is inconsistent with the intention of giving an absolute interest in the first instance.

Lassenge vs. *Tierney*, 1 McNaghten & Gordon, 551.

A power of disposition by will is inconsistent with an executory devise. Hence, inasmuch as a devise over in case E R dies *intestate*, implies and confers

a power of disposition by will, it is inconsistent with the executory devise. "*If the will expressly, or by implication, confers the power of disposition by will, or otherwise, this defeats the limitation over.*"

Armstrong vs. *Kent*, 21 N. J. Eq., 509.

"A power to devise by will is as absolute a power as a power to convey, where conveyance means by bargain and sale. * * The personal estate is bequeathed absolutely to Eliza. Did the testatrix mean to limit or restrain the dominion and control of Eliza over this personal estate? *Did she mean that her daughter should have only the use or income of such estate, and not the absolute disposition of it?* If such had been her intention it would have been so expressed. From the nature of this property, the character of the bequest, *an absolute power of disposition over the personal estate passed to Eliza by will.* * * If *this be so, the limitation over is inconsistent with the devise of this property.*" Id. 520. * * "The will is not to be the exercise of a power, but an incident to property which is sufficient to place the whole at the absolute disposal of the legatee. * * *Inviolability seems to be a primary characteristic of an executory devise; that it cannot be affected by the will of the first taker*," id 523.

"It is the case of a fee first given by express words, with a power of disposition by will. This power is one inconsistent with and destructive of the limitation over." Id 524.

In *Smith* vs. *Bell*, the testator declared, "I give to my wife, Elizabeth *Godwin* all my personal estate, whatsoever and wheresoever, *to and for her own use and benefit and disposal absolutely.*" Chief Justice

Marshall admitted, "that words could not have been employed which would be better fitted to give the whole personal estate absolutely to the wife." But the testator proceeds: "The remainder of said estate to be for the use of the said Jesse Goodwin. * * * *The limitation in remainder shows that, in the opinion of the testator, the previous words had given only an estate for life. This was the sense in which he used them.* * * *The rule that the remainder may be limited after a life estate in personal property, is as well settled as any other principle of our law.* * * *The intention to give the personal estate absolutely to the wife, is, it is true, inconsistent with the intention to give it after her decease to his son.* * * *As this construction destroys totally the legacy, obviously intended for the son by his father, it will not be made unless it be indispensable.* * * *The first part of the clause which gives the personal estate to the wife, would, undoubtedly, if standing alone, give it to her absolutely. But all the cases admit that a remainder limited on such a bequest would be valid, and that a wife would take only for life.* * * *They (the words limiting the remainder) are totally inconsistent with an estate in the wife which is to endure beyond her life.*" 6 Pet., 76, 78, 79; S. P. *Giles* vs. *Little*, 104 U. S., 295-6; *Brant* vs. *Virginia, &c., Co.*, 93 Id., 326.

A limitation over on the death of the first taker, or a direction that the interest of money or the rents shall be paid annually to him for life, or a power of sale to another with an order to invest the proceeds for the first taker's life and afterwards over, is evidence that he has but a life interest. A power to sell and invest, and pay at stated intervals, cannot co-exist with absolute ownership in another than the

donee of the power. Sheets' Estate, 52 Pa. St., 259. Language could hardly be more pertinent than that of the court in the case cited :

> "*It may be that if the first clause of the sentence stood alone, it would give a fee simple to those children in the real estate, and an absolute interest in the personal property. But in the same sentence, as well as in those that follow it, the testator has declared in effect that such was not his intention.* * * *How are these duties to be performed, if the children of the testator take absolutely the entire ownership? How is the executor in such a case to invest and pay interest annually? How is he after the death of a child to pay the principal to a grandchild? It is impossible. These directions of the will are wholly irreconcilable with any construction that asserts an absolute interest in the personalty to have been given to a child of the testator. The decree of the Orphan's Court strikes them out of the will, or renders them entirely inoperative.*" Strong, J., Id., 264.

In order that the intent of the testator to make a complete disposition of all his property, and the provisions of his will so construed, as to carry that intent into effect, it must be held that upon the death of any of the testator's daughters ("any of them"), the share of which such deceased daughter received the income during life, goes to her surviving children, or failing them, to her surviving sisters. Otherwise as to this the testator did die intestate.

V.

If the testator did mean to say, that he gave each of his daughters an absolute estate, which, *to the whole extent that it exceeded a life estate*, was to cease

and determine in every instance, upon the marriage of such daughter with anybody, it would be unquestionably a condition in restraint of marriage, and as such void, *as to all that exceeded a life estate.* It would not be a provision "restraining marriage under twenty-one, or other reasonable age, without consent of executors, guardians, &c., or prohibiting marriage with particular persons, and the like," which are acknowledged to be "valid and legal conditions." But it would directly import an "*absolute injunction to celibacy,*" which as certainly is *not valid.* 7 Williams on Executors, p. 1095.

> "The law will not allow conditions in absolute restraint of marriage; and accordingly it has been lately held, in the instance of a condition subsequent, that it was altogether void, and that the legatee should retain the interest given to him, discharged of the condition, *notwithstanding a gift over.*" Id., *Morley* vs. *Renoldson*, 2 Hare, 570.

Such a construction of this will would defeat the limitations over, not only in the case of Virginia Tayloe, but in the case of each of the sisters to whom the identical condition applied. *Every one of them would take an absolute estate discharged of the condition.* There would be no duties left for trustees to perform, no remainders in any case for them to preserve. There would not even be a separate estate to invoke their tutelary care. It would be superseded by the avoiding and illegal condition the instant the occasion for it arose. Marriage is the sin which separates the childless spinster from the childless widow—like the sheep from the goats.

A will could hardly be produced affording less ground for such an intent—an intent in restraint of marriage, an illegal condition and restriction. The testator gives to his daughter-in-law, Maria Tayloe, $1,200 per annum, not, of course, because she did not marry, but because she did. To her son, and to his grandson, John Tayloe, Jr., he gives a large estate, but carefully provides that if his grandson shall die "unmarried, under age and without issue, the same shall revert to his own right heirs. (Rec., p. 57.) It will be seen that here the testator uses language which is sufficient to give the absolute estate, but shows that he means a limited one, which is to be not restricted but enlarged by marriage and offspring.

He devises land to the children of his niece, Jane Beverly, but in case "*any of them*" should die without issue, living at the time of his or her death, then to the surviving children, and to the issne of such as may be dead, and in case of the death of all leaving no issue, then to his own right heirs. To his grandson he says, in substance, "the best proof that you are worthy to bear my name is the fact that you transmit it. What is the use of providing means for your posterity if you don't provide posterity for the means. I can exercise my own judgment as to the lines in which I want my property to go. The inheritence I provide for my children is for those who leave some one to inherit. My paternal and patriarchal love for you is such, that I am willing to leave for you a life estate out of my property even though you neither increase the property nor yourself. But after that take away the talent from the unprofitable servant, and give it to the one who knows how to be fruitful."

Every line of this will makes it manifest, that, in respect to all his descendants, the testator intended that every mother's son and father's daughter of them should get married, and that speedily and securely; and that the whole hope and intent of this will was disappointed by any who did not.

> "In regard to conditions subsequent; if they be in general restraint of marriage, and there is no limitation over, they are void as to both real and personal estate. *If in general restraint of marriage, and there is a limitation over, they are void as to personal estate.* But as to real, the cases are in conflict." *Gough* v. *Manning*, 26 Md., 251, 252.
>
> "The use of a thing may be given during celibacy; for the purpose of intermediate maintenance will not be interpreted maliciously to a charge of restraining marriage." *Scott* v. *Tyler*, 2 W. & T., Leading cases in Equity, 473. "The case of widowhood is altogether excepted by the novels, and injuctions to keep that state are made lawful conditions." Id., 472. Both by the common law of England as well as by the civil law all conditions annexed to gifts *generally* prohibiting marriage are void, as being against public policy, or, as Lord Thurlow expresses it in the principal case, "*contrary to the common weal and good order of society.*" Id., 475.

VI.

It is averred, and, by the form of this contention, conceded, that it has always been considered in the family that the legacy of any daughter, upon her death without issue, *was to go to her surviving sisters, and that the executors of the will so understood it.* Rec., pp. 21 and 22. Through a long life Virginia

Tayloe received the income of this legacy, and never applied for and never received anything else. "A testator bequeathed to his daughter £450, and if Anna dies without heirs, and immediately thereafter of her husband's death, that said portion shall be due and payable to her two sisters * * share and share alike, and solely by them redeemable." The conduct of the executors showed that they supposed the interest of Anna was for life only. The Court said: "This was a construction of the testator's will that gave Anna only a life interest in the legacy, *and she acquiesced in that construction all her life by receiving the annual interest from her brothers or their successors in title, without once demanding the principal to be paid to her.* * * Anna, for whose benfit this particular bequest was intended, enjoyed it during life in the manner she thought her father intended, and now, if it could be demonstrated, never so clearly, that he meant she should have had an absolute interest in the legacy instead of its usufruct, it would ill become us to say in direct opposition to the terms of the will, that it shall not be due and payable to her two sisters." *Hagerty* vs. *Albright*, 52 Pa. St., 274.

As heretofore indicated, the true construction of this paragraph, illuminated as it is by the whole tenor of the will, is precisely the same, as if the testator had more elaborately said, "and from and after the intermarriage of Catharine, then my said executors shall hold, &c., *and in case she shall die without leaving such issue, then in trust for her surviving sisters;* and from and after the intermarriage of Elizabeth, then my said executors shall hold, &c., *and in case she shall die without leaving such issue, then*

in trust for her surviving sisters ; and from and after the intermarriage of Virginia, then my said executors shall hold, &c., *and in case she shall die without leaving such issue, then in trust for her surviving sisters.*"

Instead of repeating the identical phraseology four separate times, the testator aimed to accomplish the same result by saying it once, applying it equally to each and to all, and by the demonstrative "she" equally referring to each and to all of his then unmarried daughters.

LEIGH ROBINSON,
For R. Carter Wellford, B. R. Wellford, and A. N. Wellford.

In the Supreme Court of the United States.

OCTOBER TERM, 1890

R. CARTER WELLFORD *et al.*
vs.
WM. TAYLOE SNYDER, *Trustee,* } No. 105.

Assignment of Errors.

(To be inserted between pages 4 and 5 of Appellants' Brief.)

The court below erred—

First. In declaring that the testator bequeathed to each of these four daughters twenty thousand dollars in absolute property;

Second. In holding that there was to each daughter a bequest of personalty without words of limitation;

Third. In holding that there was to each daughter an absolute bequest limited over upon an event which, in the case before the court, is construed to have failed at the death of the legatee;

Fourth. In holding that the bequest to each daughter was an absolute bequest limited over in the event of marriage.

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Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 105.

R. CARTER WELLFORD ET AL., APPELLANTS,

vs.

WILLIAM TAYLOE SNYDER, TRUSTEE.

Brief for Appellees, Legatees of Virginia Tayloe.

WM. PINKNEY WHYTE,
HENRY WISE GARNETT,
Counsel for the Legatees of Virginia Tayloe.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

Supreme Court of the United States.

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No. 105.

R. CARTER WELLFORD ET AL., APPELLANTS,

vs.

WILLIAM TAYLOE SNYDER, TRUSTEE.

Brief for Appellees, Legatees of Virginia Tayloe.

This is a suit of interpleader filed to obtain a construction of the will of Col. J. Tayloe, the suit being filed by the substituted trustee under the will and proceedings thereon, holding a fund of $20,000 bequeathed to Virginia Tayloe by said will (the bequest being on the second page of the record) and by her will devised.

The question is, Did Virginia Tayloe (who died unmarried), one of the daughters of John Tayloe, take an estate under her father's will which she was able to pass to others by will?

The will of John Tayloe is dated July 21, 1824, and the codicil March 4, 1826, and the special clause to be construed is as follows:

"I give and bequeath to my daughters Catherine, Elizabeth M., Virginia, and Anne O. Tayloe twenty thousand dollars apiece, to be invested in United States Bank stock or in

Government securities, which stock or securities I do hereby direct that my executors, hereinafter named, shall hold in trust for my said daughters respectively, and shall apply the dividends, interest, or profits of said stock or securities to the use and benefit of my said daughters Catherine, Elizabeth M., Virginia, and Anne O. Tayloe severally and respectively, as the said dividends, interest, or profits shall accrue, and from AND AFTER THE INTERMARRIAGE OF ANY OF THEM, THEN my said executors shall hold the said bank stock or other securities BELONGING TO SAID DAUGHTERS SO MARRYING in trust for the following purposes—that is to say: In trust for the maintenance of her and her husband during their joint lives, then in trust for the survivor of the said husband and wife during his or her life, and after the death of such survivor, then in trust for such issue as she may leave at the time of her death, and in case she shall die without leaving such issue, then in trust for her surviving sisters (my other daughters) and the issue of any deceased sister, such issue taking such share as the deceased sister, whom they represent, would have taken had she been alive to take; and it is my intention that the stock and securities, as also the dividends, interest, or profits thereof, shall be utterly free from the power of control of the husbands of my said daughters. And the better to secure the payment of these my daughters' fortunes I do hereby direct that if the funds hereinafter particularly appropriated for the payment of debts and legacies shall be insufficient for the payment of debts and legacies, my estate generally must be charged to make up the deficiency to my said daughters."

The will on its face shows a careful and professional draftsman and a proper understanding and application of terms. It will be observed that in the case of the bequest to his daughter-in-law, Maria Tayloe (near the bottom of page 5 of the record and subsequently), which he intended to be merely for life, he uses the word "annuity"—there is here an omission in the record, the following, "part of an annuity of twelve hundred dollars," being omitted after the words four hundred—and at each subsequent mention, therefore, refers to it as "for and during her natural life and no longer." This occurs again on page 5 of record

again on page 6, near the top, and once on page 7 of record, thus showing the care of testator to fully express his intention to give a life estate only when he entertained such an intention. Again, in reply to the claim of survivorship made on part of the defendants Wellford, as grandchildren of the daughter Elizabeth, the will shows that the testator used the proper terms whenever he proposed to give an estate in joint tenancy, as will be seen by his devise of his Brunswick and Cloverdale estates (on page 7 of record, near bottom of page). Again, in reply to the claim that it was the intention of the testator that in the event of failure of marriage and issue the legacy should survive to the sisters.

In the legacy to the children of his niece, Jane Beverly (on page 8 of the record), it will be seen how carefully the testator provides for a case of failure of issue, and in this way, in the clause now before the court, in which he makes bequests to his daughters, he is careful to provide for the event of the failure of issue in the case of every daughter marrying, showing that his attention had been given to this subject, and the language used plainly shows his intention that the legacy to each daughter should be absolute in the event of failure of marriage.

There are cardinal rules of construction to be kept in view in inquiries such as the present.

The intention of a testator is to be collected FROM THE WORDS OF THE WILL, and the whole will is to be considered and compared, and such construction should be made as will *gratify every part of the will*, if it can be done consistently with the general intent.

Bowly *vs.* Lammot, 3 H. & J., 4.
Dougherty *vs.* Mouett, 5 G. & J., 459.

"In the construction of a will the intention expressed by the testator, to be collected from the whole instrument, if consistent with the rules of law and there be apt words to express that intention, shall prevail."

That all parts of a will are to be construed in relation to each other, and so as, if possible, to form one consistent whole.

Chamberlaine *vs.* Owings, 30 Md., 454.

The general rule is—

"That any words showing the intention of the testator to dispose of his whole interest in the thing devised will have the same effect as a devise to one in fee simple or forever."

A devise over of personal property must be done by express words or necessary implication.

Evans *vs.* Iglehart, 6 G. & J., 185.

Cassilly *vs.* Meyer, 4 Md., 10.

In bequests of personal property without words of perpetuity the legatee does not take a mere life estate which can be enlarged by subsequent limitation, but an absolute estate which is incapable of enlargement.

Edelin *vs.* Mitchell, 9 Gill, 161.

A gift of personal estate without words of limitation is sufficient to pass the absolute interest, and a bequest of the income or annual produce of a fund is equivalent to a gift of the principal.

Hawkins on Wills, p. 123.

Indefinite bequest of the dividends gives the absolute property of stock.

Page *vs.* Leapingwell, 18 Ves., p. 463.

Gift of the interest of the capital sum of £1,000 to wife for her sole use and benefit, free from debts or control of any husband, held absolute gift of capital.

Humphrey *vs.* Humphrey, 1 Simons, N. S., 536.

By devise of the rents the land itself would pass unless a contrary intention appeared.

Kerry *vs.* Derrick, Cro. Jac., 104.

Devise of the rents of an estate is held to pass the fee.
2d Redfield, 2d ed., 329.

The gift of the produce of a fund without limit as to time is a gift of the fund, and the interest of each of the legatees is vested and assignable.
Manning *vs.* Craig *et al.*, 3rd Green's Ch. R., 436.

A bequest of the interest or produce of a fund without limitation as to the extent of its duration is a bequest of the fund itself.
Garrett *vs.* Rex, 6th Watts, 14.
Pa. Co. Appeal, 83 Pa. St., 312.
Millard's Appeal, 87 Pa. St., 457.

An unconditional bequest of the dividends of the stock is a bequest of the stocks themselves.
Collier *vs.* Collier, Executors, 3rd Ohio St., 369.

The same rules of construction to determine the quality of her estate, whether for life or in fee, are equally applicable to estates placed in trust and those which are not, except so far as the creation of the trust may throw light upon the intention of the testator.

The will disposes of all the estate of John Tayloe, and the general presumption of law is very strong that he did not mean to die intestate of any part of his property.

In such case the courts are very slow and reluctant to adopt a construction which causes partial intestacy.

The scheme of his will is to dispose of his whole estate.

He provided for all his sons with great particularity; he designated the farms and the slaves to go with them; he provided for the crops and arranged the minutest details of these dispositions of his property.

He was familiar with the terms to be used in giving a life estate, and when he meant to give a life estate he said so.

He provided for his wife the use of the dwelling, &c., "during her natural life, and no longer."

He desired to give to his daughters $20,000 each, but he did not wish their husbands, should they marry, to control *their fortunes.* He was willing that the husband, if he survived the wife, should enjoy the income for life; and after his death the *corpus* of the estate should go to the issue of the marriage, and, if none, then to the surviving daughters of John Tayloe; but there is no limitation over of the $20,000 in case any of his daughters *did not* marry.

There are no words of limitation as to the duration of the estate to the *single* daughters.

If he intended an unmarried daughter to have only a life estate why not say so and provide for its transmission to other parties?

On this point the intention of the testator is clearly manifested and legally expressed, in the language of the bequest, to his daughters. The whole title of the testator is transferred to them. The trust is only to protect from husbands, should they have any.

If he intended merely to give them the income and nothing more he would never have devised the *corpus* of the estate, as he did, for their benefit.

"A restriction on absolute ownership may be rejected as repugnant to the nature and incidents of the estate on which it is engrafted, unless there be a valid limitation over, upon the occurrence of some designated event."

1 Jarman on Wills, 257–784.

A gift of personalty to trustees to pay the interest to "A" is an absolute gift of the principal.

Elton *vs.* Sheppard, 1 Bro. Chy. R., 532.

A bequest of stock to trustees, upon trust, to pay the dividends from time to time to a married woman for her separate

use is an unlimited gift of the dividends, and, consequently, passes the capital.

Haig *vs.* Swiney, 1st Simons and Stuart, 487.

Bequest to a woman of a fund with the interest thereon to be vested in trustees, the income arising therefrom to be for her sole use and benefit, vests the capital for her separate use.

Adamson *vs.* Armitage, 19 Ves., p. 416.

When the "interest" or "produce" of a fund is bequeathed to a legatee, or in trust for him, without any limitation as to continuance, the principal will be regarded as bequeathed also.

Craft *vs.* Executors of Snook, 13 N. J. Eq., 121.

Gulick *vs.* Gulick's Executors, 27 N. J. Eq., 498.

The attention of the court is especially invited to the case last cited.

Where proceeds of sale are directed to be invested by executors and interest paid to A, B, and C equally, and the survivors of them, without limitation of time, and will was silent as to further disposition of principal—held to be a bequest of principle as well as interest.

Earl *vs.* Grim, 1 Johns. Chy., 494.

Legacy to trustee of certain sums for use of B, and to be used for support and maintenance and no limitation over, is bequest of an absolute interest to B.

McMichael *vs.* Hunt, 83 N. C., 344.

A testator gave to A and B "$1,000.00 each, the interest to be paid to them annually by my executor, who is to be their trustee in this bequest"—held that the bequest was of

$1,000.00 absolutely, and not merely the interest on that sum.

Sproul's Appeal, 105 Pa. St., 438.

In the construction of wills the law, in doubtful cases, leans in favor of an absolute rather than a defeasible estate; of a vested rather than a contingent one; of the primary rather than the secondary intent; of the first rather than the second taker, as the principal object of the testator's bounty, and of a distribution as nearly conformed to the general rules of inheritance as possible.

Amelia Smith's Appeal, 11 Harris, 9.
Sheriff *vs.* Brown, Cen. Law. Rep., Vol. III, 16, p. 772.

Where the devise over is made dependent upon the devisee dying before he came of age, or without issue, or any similar event, it is considered that the devise is equivalent to a provision that the first donee shall take an immediate vested interest, liable to be defeated by the happening of the contingency named, or, if it do not happen, the estate then to become absolute and indefeasible.

2d Redfield on Wills (2d Ed.), 325, and cases there cited.

When there is a trust, however, and a manifest intention to modify the mode of enjoyment, the court will strive to maintain the intent. The testator did not intend to give a life estate to these legatees.

There is no disposition made of the fund after the death of the legatees, *if they remained single.* The gift is couched in as broad and unlimited terms as possible; and then follows the direction as to investment, which implies that the property shall remain in the hands of the executors, and the donees shall only receive the income. But it is well settled that a gift of income or produce of a fund unaccompanied

by words limiting the duration of the benefaction confers an absolute estate.

Elton *vs.* Sheppard, 2 Bro. 20, C. C., 532.
Phillips *vs.* Chamberlaine, 4 Vesey, 53.
Rawlings *vs.* Jennings, 13 Vesey, 39.
Adamson *vs.* Armitage, 19 Vesey, 416.
Stretch *vs.* Watkins, 1 Madd., 253.
Clough *vs.* Wynne, 2 Madd., 188.
4 Bradford, Surrogate, 341.

One of his daughters, Henrietta, having *married*, he settled on her $10,000, and by his will he settled $10,000 more on her to her separate use for life, and then to her (p. 8, Record) children and their descendants.

Then comes the provision for the single daughters of $20,000 each, and to protect them if they marry.

Then by codicil (page 11, Record) he gives James Baker, husband of Catharine, in part of the *fortune intended to be bequeathed to her*, $5,000, and then all the estate and interest whatsoever bequeathed by my said will to my said daughter, Catharine (except $5,000), shall be taken and received, to be in trust to my said daughter, Catharine, to her *separate* use and, &c., as requested by her husband. Intention: that no part of the said Catharine's fortune shall be enjoyed by the said James B., but as the *separate estate of his wife.*

The estate was given absolutely to the daughters. The codicil shows that the "fortune" is given the daughters, and if *they marry*, then for the survivor, and after the death of the survivor to the issue of that marriage, and if no issue of said marriage, then to the surviving sisters. The object was to prevent the husband's representatives, should he survive his wife, from taking the daughter's "fortune."

This case is very similar to that of Fairfax *et als. vs.* Brown *et als.*, 60 Md., 52.

The clause in that will is as follows: (See page 52.)

"And, secondly, that the said persons or parties aforenamed, as trustees in this behalf, and the successors, survivors, or acting one or more of them, shall hold all the rest and residue of my said property and estate, and every part thereof not hereinbefore specially devised and disposed of, in trust for the joint and equal benefit of my daughters, Harriet N. Wright and Sarah O. Wright, and shall pay to each of my said daughters, out of the proceeds thereof, the sum of five hundred dollars a year, in quarterly payments; for which payments, well and truly made, the receipt of my said daughters for their respective share or part of said five hundred dollars a year each shall alone be sufficient acquittance to my said trustees or either of them. In this devise of a part and portion of my property and estate in trust for my two daughters, Harriet and Sarah, it is my will and desire, and I do so order and direct, that the said trustees and their successors shall hold all my property and estate so devised to them for the sole use and benefit of my said daughters, equally and respectively and in an especial manner. I will and direct that the portion or share of my property and estate and the proceeds thereof to which my said daughters Harriet and Sarah, and either of them, are or may become entitled under this my will and under the trust herein created for their benefit shall not be subject or liable in any manner or degree to any claim, right, power, or control of any one claiming under them, or in their name, or of any husband either of them may have; nor be liable for any debts, contracts, or engagements any such husband may have or make, either before or after marriage with my said daughters, or either of them, and the receipt and acknowledgment of my said daughters, and either of them, whether single or married, shall alone be good proof and acquittance to their or her trustees or trustee for the portion and share of the proceeds of my estate to which my said daughters, and either of them, are or may become entitled under this my will and under the devise in trust herein created for their benefit.

"And it is further my will and desire, and I do so order and direct, that all the income and proceeds of my property and estate as devised above for the use and benefit of my said daughters, over and beyond the sum of five hun-

dred dollars a year, herein directed to be paid to each of my said daughters by the above-named trustees or their successors, shall be invested by said trustees or their successors in city stock, State stock, or United States stock, or according to the best of their judgment, for the benefit of my said daughters, and all interest accruing on said investment or investments shall be paid to my said daughters semi-annually and in equal proportion to my said daughters, in addition to the five hundred dollars a year hereinbefore directed to be paid to them quarterly by said trustees or their successors."

This being a general devise of the whole residue of his estate without any words of limitation or perpetuity, devisees will take the entire and absolute interest of the testator, unless it shall appear that the testator intended otherwise.

There is no devise over of this property, and it is not presumed that the testator intended to die intestate of this portion of his estate.

The will must clearly manifest an intention to pass only a life estate before his children can be deprived of the fee.

It being clear that there is no limitation over as to the fortune of the unmarried daughter, Virginia Tayloe, she had power absolutely to leave it to her niece by will.

We add as an appendix the opinion of the court below.

Wm. Pinkney Whyte,
Henry Wise Garnett,
Counsel for the Legatees of Virginia Tayloe.

APPENDIX.

WILLIAM TAYLOE SNYDER, *Trustee*,
vs.
ADELAIDE E. BAKER *et al.*

Mr. Justice HAGNER delivered the opinion of the court:

The bill in this case was filed by Mr. Snyder, as trustee under the appointment of this court, for instructions as to the proper distribution of a bequest of $20,000 under the will of Colonel John Tayloe to his daughter Virginia.

It avers that Virginia Tayloe died after executing a last will and testament, by which she bequeathed this $20,000 to her niece, Miss Lewis, who demands payment of the entire sum; but that the money is also claimed by the children and grandchildren of the sisters of the said Virginia, who deny the right of the said Virginia to bequeath the said property by her will, insisting that she was only given a life estate in the legacy by her father, and that upon her death, unmarried and childless, it devolved upon her surviving sisters and their children, under the proper construction of the will of Col. John Tayloe.

The court below sustained the claim of the legatee, Virginia T. Lewis, and from this decree the present appeal is taken in behalf of the grandchildren of Mrs. Carter, one of the sisters of Virginia Tayloe. The clause referred to is as follows:

"I give and bequeath to my daughters, Catharine, Elizabeth M., Virginia, and Anne O. Tayloe, twenty thousand dollars apiece, to be invested in United States bank stock or in Government securities, which stock or securities I do hereby direct that my executors, hereinafter named, shall hold in trust for my said daughters respectively, and shall apply the dividends, interest, or profits of said stock or securities to the use and benefit of my said daughters, Catharine, Elizabeth M., Virginia, and Anne O. Tayloe, severally and respectively, as the said dividends, interest, or profits shall accrue, and from and after the intermarriage of any of them,

then my said executors shall hold the said bank stock or other securities belonging to said daughters so marrying in trust for the following purposes—that is to say, in trust for the maintenance of her and her husband during their joint lives, then in trust for the survivor of the said husband and wife during his or her life, and after the death of such survivor, then in trust for such issue as she may leave at the time of her death; and in case she shall die without leaving such issue, then in trust for her surviving sisters (my other daughters) and the issue of any deceased sister, such issue taking such share as the deceased sister, whom they represent, would have taken had she been alive to take; and it is my intention that the stock and securities, as also the dividends, interest, or profits thereof, shall be utterly free from the power of control of the husbands of my said daughters." Then follows this provision: "And, the better to secure the payment of these my daughters' portions, I do hereby direct that if the funds hereinafter particularly appropriated for the payment of debts and legacies shall be insufficient for the payment of debts and legacies my estate generally must be charged to make up the deficiency to my said daughters."

Among the familiar principles of law laid down with reference to the interpretation of wills which it will be well to keep in mind in arriving at a correct construction in the present case are these:

First. It makes no difference whatever, in construing such a bequest as that to Virginia Tayloe, that the property was left in the hands of trustees. The same rules of construction to determine the quality of her esttae, whether for life or in fee, are equally applicable to estates placed in trust and those which are not, except so far as the creation of the trust may throw light upon the intention of the testator. (Fairfax *v.* Gunn, 60 Md., 55.)

Again, it is a recognized principle that when a man has undertaken to make a will it is presumed that his purpose was to dispose of his entire estate. If Col. Tayloe intended to leave to his daughters only a life estate, and neither should have married, then the testator would have died intestate of *the remainder* of the $80,000 so bequeathed for life to his daughters, and this result would have been inconsistent with the legal presumption that the testator intended to dispose of the sum absolutely; and the will must manifest a clear intention that the daughters should have only a life

estate before the court would declare that the testator had only disposed of a life interest in the legacy, and had died intestate as to the remainder.

And as to personal property, it is held that a gift of the produce of a fund is a gift of the fund itself unless there be words of qualification restraining the extent and duration of the interest; and a bequest of personalty, without words of limitation or perpetuity, passes an absolute estate in the thing bequeathed unless the contrary intention is plainly expressed or necessarily implied. (Adamson *vs.* Armitage, 17 Ves., 416.)

There are in this will several bequests which, it is conceded, give absolute interests, to which no words of limitation are annexed. For example, the testator gives and bequeaths to all his sons all his tradesmen and mechanics of every description, such as smiths, carpenters, joiners, wheelwrights, ship-carpenters, masons, shoemakers, &c., to be equally divided amongst them, and all the plate which belongs to the house in Washington wherein he resides, which is to be equally divided, after his wife's death, among all the sons; and he also directs that all his stock of liquors and spirits on hand at his death is to be equally divided among all his sons; and these bequests would pass absolute estates in the personalty bequeathed without any word of limitation.

It is perfectly plain that this will was skillfully and artificially drawn. It is apparent from many items that the testator knew how to frame a devise or bequest for life in apt words; thus in proper terms he gives to his wife an estate for life in what is given to her. The charge upon the estates of several of his sons in favor of one of his nieces is properly limited to her life only, and so in other instances; all intimating clearly that he knew how to use words properly when he desired to create a life estate; and this circumstance is persuasive to suggest that he would have used similar plain words to limit the interest of his daughters in the fund for life if such had been his purpose.

The testator provided most munificently for his sons and grandson. His will enumerates upwards of thirty plantations, which are devised to them, without exception. The bequests for the daughters are insignificant in comparison, and it would enhance the hardship if the court should be

compelled to cut down to life estates the slender portions which from his abundance he doled out to his daughters.

Omitting the provision as to marriage from the clause under consideration, there remains not one word to limit the power of disposition on the part of the daughters, or to combat the idea that the testator contemplated the vesting of the property in their personal representatives in case of their intestacy, or their power to bequeath their shares by last will. The language preceding the words "and from and after the intermarriage of any of them," &c., constitutes an ample gift of an absolute estate in the several sums of $20,000 apiece to each daughter, although it declared that the money should be invested in United States bank stock or Government securities, and be held in trust "for my said daughters respectively." Those words as fully confer an absolute estate in the sums designated as the bequests before referred to do in the plate and the wines bequeathed by the testator.

The bequest is, first, directly to the daughters of "$20,000 apiece," to be invested in stocks, which he directs his executors shall hold in trust for his said daughters respectively, applying "the dividends, interest, or profits thereof to the benefit and use of the said daughters" severally and respectively "as the said dividends, &c., shall accrue."

Thus far he had made a sufficient bequest of the absolute interest in the fund for the daughters while single. We have no more reason to suppose that he considered his daughters incompetent, so long as they remained unmarried, to be trusted with $20,000 apiece than that his sons were incompetent to hold the great estates he had devised to them. They were equally his children, and as much deserving of their father's bounty. But he naturally contemplated the probability of their marriage, and he knew that new relations would arise as to the management and ownership of the personalty from the time they should marry.

From that moment, in the absence of express provisions to the contrary, the legacies would devolve upon their husbands, who might waste it and leave their wives penniless. Hence, as a prudent father, he proceeded to impose such limitations upon the gift as should serve to protect it from this risk. The management was first committed to trustees; and this provision would have served as a sufficient safeguard against unwise investments by an unmarried daughter. But

the solemnization of a marriage would create new difficulties that it was the sole purpose of the latter part of the clause to deal with, and the testator therefore added the words " and from and after the intermarriage of either of them," &c., to provide for this new condition of things.

That these added words were only intended to apply to the daughters after their respective marriages seems plain to us.

If none of the daughters should marry, it is self-evident that the added words could never possibly apply. Everything in the added sentences is predicated only of the marriage of either of the daughters, who in that event only is to affected by the new provision, since the provision as to husbands and children could have no application to her until marriage. If the entire clause had been four times expressed in the will, each repetition referring to only one daughter separately, how could the added words declaring what should happen from and after the marriage of Virginia by possibility apply if Virginia should not marry at all?

It may well be, as was argued in behalf of the appellants, that an unmarried daughter could not have disposed of her legacy at her pleasure during her life, because if she had applied to the trustees to transfer the property they would have urged the possibility of her marriage and the consequent coming into force, upon that event, of the provisions contained in the added words. But this possibility could not interfere with her power of disposal by will, since such disposition could only operate in favor of her legatee after the possibility of marriage had disappeared, namely, after her death.

The cases cited by the 'appellants' counsel in his careful brief were decided upon the particular phraseology of the wills there under examination, and they afford no certain guide where the words are as different as they are in those cases from those before us.

No decision cited comes as near to the present case as that of Gulick *vs.* Gulick, 27 N. J. Eq., 498, which is singularly like the present case. The fifth section of the will there considered reads as follows:

" I give and bequeath to my daughter Anne Maria the sum of $10,000, to be placed out at interest, on bond and mortgage, so soon as my estate can be collected without sacrifice; the bonds and mortgages to be taken in the names